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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on minority issues, Rita Izsák

Comprehensive study of the human rights situation of Roma worldwide, with a particular focus on the phenomenon of anti-Gypsyism*

Summary

The present report provides an overview of the human rights situation of Roma worldwide, applying a minority rights-based approach to the protection and promotion of the rights of Roma, including the protection of their existence; the prevention of violence against Roma; the protection and promotion of Roma identity; the guarantee of the rights to non-discrimination and equality, including combating racism, anti-Gypsyism and structural discrimination; and the guarantee of the right of Roma to effective participation in public life, especially with regard to decisions affecting them. Drawing on the responses to her questionnaire, the Special Rapporteur on minority issues provides an overview of trends in State practice, highlighting positive developments as well as challenges.

* The annexes to the present report are circulated as received.

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I. Introduction

1. The Special Rapporteur on minority issues submits the present report in accordance with Human Rights Council resolution 26/4, in which the Council invited her to prepare a comprehensive study of the human rights situation of Roma worldwide, with a particular focus on the phenomenon of anti-Gypsyism. Adopting a consultative approach, she liaised with numerous international and regional organizations, Roma rights experts and non-governmental organizations (NGOs). The Special Rapporteur thanks all those who shared information with her, including the Member States and national human rights institutions that responded to her questionnaire (see annexes), the Office of the United Nations High Commissioner for Human Rights Regional Office for Europe, and the United Nations network on racial discrimination and protection of minorities.

II. Overview of the situation of Roma worldwide

A. Roma populations around the world

2. The term "Roma" refers to heterogeneous groups, the members of which live in various countries under different social, economic, cultural and other conditions. The term Roma thus does not denote a specific group but rather refers to the multifaceted Roma universe, which is comprised of groups and subgroups that overlap but are united by common historical roots, linguistic communalities and a shared experience of discrimination in relation to majority groups. "Roma" is therefore a multidimensional term that corresponds to the multiple and fluid nature of Roma identity.

3. According to the principles of international law, including article 27 of the International Covenant on Civil and Political Rights, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (the Declaration), and general comment No. 23 (1994) of the Human Rights Committee, minority identity does not depend on recognition by a State, but rather on individual self-identification. The Special Rapporteur, therefore, uses the term Roma to include all groups that self-identify as such, and also includes those who self-identify as Sinti, Kale, Travellers or Gypsies.

4. Although theories as to why the ancestors of today's Roma emigrated from India a millennium ago are beyond the scope of the present report, it is important to note that Roma have dispersed worldwide. There are, however, no official or reliable statistics on the global Roma population.

5. The largest and most visible Roma minority is European Roma, whose presence in Europe dates back to the fourteenth century. Today, there are approximately 11 million European Roma, with 6 million estimated to be residing within the 27 European Union member States.

6. European Roma, as the largest ethnic minority in the region, is the most visible Roma population worldwide; the severe discrimination and marginalization its members continue to experience has been widely reported.[1] However, little comprehensive research

[1] See, inter alia, http://fra.europa.eu/en/theme/roma, www.coe.int/en/web/portal/roma, http://ec.europa.eu/justice/discrimination/roma/index_en.htm, www.osce.org/odihr/roma, and www.romadecade.org. See also NGO reports, inter alia, Amnesty International, "Europe: Human rights here, Roma rights now: A wake-up call to the European Union", 4 April 2013, available from

has been carried out on the situation of Roma outside Europe. The Special Rapporteur on minority issues has therefore taken the opportunity to report on the severe socioeconomic marginalization that Roma experience worldwide.

7. In Turkey, data indicates that the Roma population ranges from 500,000 to 5 million.[2] In Ukraine, 47,600 persons identified themselves as Roma, according to 2001 census data, yet the Council of Europe estimates there are between 120,000 and 400,000 Ukrainian Roma. In Belarus, the 2009 census indicated a population of 7,316 Roma, but the Government recognizes that that number does not necessarily reflect the true figure, which ranges between 50,000 and 60,000.[3] The 2010 census in the Russian Federation estimated that there was a population of 205,007 Russian Roma, although Council of Europe data suggest a larger population of between 450,000 and 1.2 million.

8. Roma groups in Latin America have been arriving from Europe since the beginning of European colonization there, as well as during ongoing migration processes. Despite the lack of official census data, a 1991 study by the United Nations Educational, Scientific and Cultural Organization estimated the Roma population in the region to be approximately 1,500,000. Recent government data indicates a population of over half a million Roma in Brazil.[4]

9. It is generally accepted that approximately 1 million Roma live in North America today; however that data is incomplete, as the census in the United States of America does not include Roma as a category. Furthermore, although the Canadian census includes "Other European Origins" — "Roma (Gypsy)", there is a discrepancy between official census data, which in 2011 indicated a Roma population of 5,255, and unofficial estimates which indicate a Roma population of upwards of 110,000.

10. Roma groups are also present in Central Asian countries, where they are known collectively as *Lyuli*. While those groups are distinct from American and European Roma, they share the experience of exclusion and marginalization from local majority populations.[5] Due to a lack of up-to-date data, there are no precise figures on the number of Roma in Central Asia.[6]

11. The Dom is an ethnic minority in the Middle East that shares similarities with Roma; its presence in the region dates back to the eleventh century. There is scant official information on the number of Roma in that region. Unofficial estimates indicate there may be significant populations in Egypt, the Islamic Republic of Iran, Iraq, Israel, Jordan, Lebanon, the Occupied Palestinian Territory and the Syrian Arab Republic.[7]

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www.amnesty.org/en/documents/EUR01/002/2013/en/; Bernard Rorke, *Beyond First Steps: What Next for the EU Framework For Roma Integration* (Budapest, Open Society Foundation, Roma Initiatives Office, 2013); and thematic reports by the European Roma Rights Center, available from www.errc.org/resource-centre.

[2] Council of Europe, *Estimates on Roma population in European countries*, 2012. Available from http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008ea69.

[3] Response from Belarus to the questionnaire.

[4] See www.seppir.gov.br/comunidades-tradicionais/relatorio-executivo-brasil-cigano-1.

[5] See CERD/C/UZB/CO/8-9, para. 11; CRC/C/KGZ/CO/3-4 paras. 18, 25 and 55; CERD/C/UJK/CO/6-8, para. 13; and A/HRC/13/23/Add.1, para. 41.

[6] Response from Uzbekistan to the questionnaire.

[7] The few resources on the Dom in the Middle East include: Minority Rights Group, *From Crisis to Catastrophe: the situation of minorities in Iraq* (2014); Terre des Hommes, *A Child Protection Assessment: The Dom People and their Children in Lebanon* (2011); International Labour Organization (ILO), United Nations Children's Fund (UNICEF), Save the Children International and

B. Anti-Gypsyism and discrimination against Roma: a global phenomenon

12. While the Special Rapporteur is aware that the reasons for the marginalization of Roma are complex, she insists that an overarching factor is the deeply embedded social and structural discrimination Roma face worldwide, including anti-Gypsyism. Anti-Gypsyism has been defined by the Council of Europe as "a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination".[8] Anti-Gypsyism therefore includes strong anti-Roma prejudices and stereotypes, including those that lead to labelling Roma communities as criminal, aggressive, or as "parasites" on welfare systems. The Special Rapporteur welcomes recent European Union recognition that anti-Gypsyism constitutes a major obstacle to overcoming Roma disadvantage and marginalization.

13. Although anti-Gypsyism is originally a European term, the discrimination it embodies manifests itself in a variety of ways across regions. In Latin America, discrimination against Roma was imported with European migration, and negative stereotypes remain present today, with reports that many Roma do not speak Romani in public for fear of discrimination or reprisal. In their concluding observations, the Human Rights Committee and the Committee on the Elimination of Racial Discrimination have noted their concerns about the widespread occurrence of offences of discrimination against Roma in Brazil, including racist crimes, and the lack of application of relevant domestic legal provisions in cases involving Romani victims (CCPR/C/BRA/CO/2, para. 20; CERD/C/64/CO/2, para. 17).

14. The Dom of the Middle East are among the most marginalized people in the Arab world and suffer from widespread negative perceptions and stigma. The Dom are often labelled as *nawar*, an Arabic insult that evokes selfishness, stinginess, dirtiness and chaos.[9]

15. In its concluding observations on the fifth periodic report of the Russian Federation, the Committee against Torture noted its concern about persistent reports of discrimination, violent attacks and abuses against Roma on the basis of their identity (CAT/C/RUS/CO/5, para. 15). United Nations human rights monitoring mechanisms have repeatedly noted the marginalization of Roma in Belarus.[10] In its concluding observations, the Committee on the Elimination of Racial Discrimination has noted that Roma suffer from widespread social stigma and discrimination Tajikistan and Uzbekistan (CERD/C/TJK/CO/6-8, para. 13; CERD/C/UZB/CO/8-9, para. 11).

16. Many Roma in North America also face stigma and prejudice that originated in and are perpetuated by limited knowledge of Romani culture or history, or of the persecution Roma faced during and after the Nazi regime.[11]

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the Ministry of Labour of Lebanon, *Children living and working on the streets in Lebanon: profile and magnitude* (2015).

[8] See www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N13/e-RPG%2013%20-%20A4.pdf.

[9] Terre des Hommes, *A Child Protection Assessment*, p. 31.

[10] See E/C.12/BLR/CO/4-6, para. 27; A/HRC/15/16, para. 98.14; CERD/C/65/CO/2, para. 10; CERD/C/BLR/CO/18-19, para. 16; and A/HRC/4/16, para. 50.

[11] Ian Hancock, "Roma: Explaining Today Through History". Keynote address at the Uppsala International Conference on the discrimination, marginalization and persecution of Roma, 2013. Available from www.valentin.uu.se/aktuellt/meddelanden/Enskildanyheter/slutkonferens/.

III. Essential elements of a minority rights-based approach to protection of Roma worldwide

17. The Special Rapporteur welcomes the present report as an opportunity for her to address the situation of Roma globally through a minority rights lens, using the four pillars of minority rights: (a) the protection of a minority's existence, including combating violence against them and preventing genocide; (b) the protection and promotion of the identity of minority groups and their right to enjoy their collective identity and to reject forced assimilation; (c) the guarantee of the rights to non-discrimination and equality, including the ending of structural or systemic discrimination and the promotion of affirmative action when required; and (d) the right to effective participation in public life and decisions that affect them.

18. The present report should be seen as complementary to the work undertaken by many other United Nations mechanisms. That includes the previous work carried out under the mandate of the Special Rapporteur on minority issues, in the form of thematic reports, country reports, communications and press releases.[12] It also includes the work of other special procedures mandate holders, including the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, who has reported on the causes and consequences of racism against Roma (see, for example, A/HRC/17/40, paras. 5–25, and A/HRC/26/50) and regularly addresses challenges facing Roma in country reports (see, for example, A/HRC/23/56/Add.2, A/HRC/20/33/Add.1, and A/HRC/7/19/Add.2); the Special Rapporteur on the human right to safe drinking water and sanitation, who made important recommendations regarding Roma in her report on stigma (A/HRC/21/42) and in relevant country reports (see, for example, A/HRC/18/33/Add.2) and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (see, for example A/HRC/16/42/Add.2, paras. 51–56, and A/HRC/25/54/Add.2, paras. 69–71 and 74–75), among others. She also notes the role the United Nations treaty bodies have played in highlighting discrimination against Roma, particularly the Committee on the Elimination of Racial Discrimination in its general comment No. 27 (2000) on discrimination against Roma. Roma have also featured prominently in the universal periodic review of States before the Human Rights Council. The Special Rapporteur refers to her recently published review of minority issues in the first cycle of the universal periodic review, which highlighted that over 25 per cent of all minority rights recommendations in the review referred to the situation of Roma.[13] Despite that important work, the Special Rapporteur nevertheless believes that the full capacity of the United Nation is not yet being used by Roma rights advocates. The United Nations should be seen as a core Roma rights partner whose work can complement other mechanisms. She hopes that the present report will contribute to such an approach.

[12] See the Special Rapporteur's thematic reports on citizenship (A/HRC/7/23), hate speech and incitement to hatred against minorities in the media (A/HRC/28/64), and ensuring the inclusion of minority issues in post-2015 development agendas (A/HRC/25/56). See also the reports of the Special Rapporteur's missions to France (A/HRC/7/23/Add.2), Greece (A/HRC/10/11/Add.3), Bulgaria (A/HRC/19/56/Add.2 and Corr.1), Hungary (A/HRC/4/9/Add.2), Ukraine (A/HRC/28/64/Add.1), and Bosnia and Herzegovina (A/HRC/22/49/Add.1). See also press releases, available from www.ohchr.org/EN/Issues/Minorities/IExpert/Pages/PressRoma.aspx.

[13] See www.ohchr.org/Documents/Issues/IEMinorities/MinoritiesIssuesIsteyelel/PRProcess.pdf, pp. 15–18.

A. Pillar 1: protection of existence and prevention of violence against minorities

19. The Special Rapporteur remains concerned that globally there is little awareness that Roma were targeted by the Nazi regime and were subjected to arbitrary internment, forced labour and mass murder. Together with the Special Adviser of the Secretary-General on the Prevention of Genocide, she has called for stronger measures to keep the memory of the Roma Holocaust — referred to as *Porrajmos* or *Pharrajimos* in the Romani language — alive, and to enable survivors and others to mark it in a recognized, dignified manner.[14] The Special Rapporteur also notes that violence against Roma is not only an historical circumstance but remains a current reality for many Roma communities. Therefore, Governments must remain vigilant and take appropriate measures against signs of hatred and stigmatization.

20. In 2014, Amnesty International reported that harassment and intimidation of Roma individuals and communities in Europe continued to be widespread.[15] One of the most tragic manifestations of hatred against Roma was the serial murder of six randomly selected Roma people, including a five-year-old boy, in Hungary in 2008 and 2009. Roma are reportedly at higher risk of being subjected to violence in other regions too. In Iraq, the Dom are allegedly targeted, their villages reduced to rubble and the residents slaughtered by militants opposed to their religious and cultural traditions. Roma women in Iraq are also reported to be severely exposed to sexual violence and a heightened risk of exploitation.[16]

21. Roma are also vulnerable to violence by State actors, which can be both explicit and implicit. The Special Rapporteur is concerned about police harassment, intimidation and abuse. Empirical studies indicate that Roma are overrepresented in the criminal justice systems across Europe, with research indicating that they are often detained arbitrarily on account of their Roma identity.[17] The lack of a visible Roma presence in police forces and judiciaries compounds that problem.

22. The Special Rapporteur also remains concerned by the failure of public authorities to protect Roma from violent attacks. That includes the lack of systematic intervention and condemnation by public figures when political and public discourse perpetuates racist and extreme views about Roma, and the failure of law enforcement authorities to protect Roma from the perpetrators of crimes against them.[18] For example, a violent police crackdown on a Roma community in Slovakia in 2013 was condemned by a number of special procedures mandate holders,[19] the United Nations High Commissioner for Human Rights,[20] and the country's Ombudswoman. Nevertheless, the Minister of the Interior of Slovakia publically labelled the Roma victims of that intervention as criminals, and investigation into the police misconduct has been slow, with no charges brought against the police to date.[21] Such failures by authorities to protect Roma adequately and to distance themselves from all

[14] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14917&LangID=E#sthash.bigIt871.dpuf.

[15] Amnesty International, *"We ask for justice" Europe's failure to protect Roma from racist violence* (London, Amnesty International, 2014).

[16] Minority Rights Group, *From Crisis to Catastrophe* (see note 7 above). Interview with a representative of Minority Rights Group in Iraq.

[17] See, for example, A/HRC/27/48/Add.2, para. 117, A/HRC/10/21/Add.5, para. 67, and A/HRC/27/48/Add.4, paras. 118–121.

[18] Amnesty International, *"We ask for justice"* (see note 15 above), p. 6.

[19] See A/HRC/25/74, p. 60.

[20] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13687&LangID=E.

[21] Response from the national human rights institution of Slovakia to the questionnaire.

manifestations of anti-Gypsyism not only promote a climate of distrust, dissuading Roma from reporting violent crimes against them to authorities, but also create an atmosphere of impunity and may encourage further acts of violence against Roma.

B. Pillar 2: protection and promotion of Roma identity

23. The protection and promotion of Roma identity means that States have the obligation not only to protect Roma from forced assimilation,[22] but must adopt positive measures that promote the distinctive characteristics of Roma culture, including language, history and tradition. That should be achieved through financial and technical assistance to preserve the Romani language, art, poetry, dance, music and traditions, including their promotion through the media. Roma history and the cultural contribution of Roma must also be recognized and taught in school curricula. In that regard, Roma must be given opportunities for self-interpretation and self-representation.

24. Nevertheless, across the regions, negative stereotypes of Roma persist, describing them as criminal, unworthy, unclean or aggressive. The Special Rapporteur has explained how hate speech, including negative stereotyping of Roma, is widespread in the media, including social media, and in public political discourse, and how Roma rarely have access to media or other means necessary to challenge those perceptions.[23] Hate speech is not only a denigration of Roma identity, but impacts negatively on Roma community members' sense of inclusion in the national psyche. The Special Rapporteur therefore understands a key aspect of pillar 2 to include addressing hate speech through systematic intervention and condemnation.

25. In the context of her global study, she also wishes to draw attention to incidents of negative stereotyping of Roma outside Europe. For example, in Argentina, a now discontinued television series, *Soy Gitano*, focused on so-called "Gypsy crime". Although the Roma community in Argentina denounced the soap opera to the National Institute to Combat Discrimination, Xenophobia and Racism, the complaint was dismissed on the grounds that the series was fictional. A similar complaint was filed before the Canadian Broadcast Standards Council following a show which contained strong discriminatory statements towards Roma refugees in Canada. As a result of the complaint, the network removed the video from their web page and issued an apology. The misrepresentation of Roma in the media in Turkey was exemplified by a popular television series, *Cennet Mahallesi*, which presented highly stereotypical depictions of Roma. In the United States of America, a reality television programme entitled *My Big Fat American Gypsy Wedding*, a spin-off of a show of the same name in the United Kingdom of Great Britain and Northern Ireland, continues to be broadcast today. Both versions have been criticized for their stereotypical approach and for misrepresenting Roma culture.

26. Beyond misrepresentation in the media, there are also State-sanctioned communications vilifying Roma. In August 2011, a Russian newspaper published an article called "Be careful!", signed by an employee of the Ministry of the Interior, advising readers to be extremely vigilant when dealing with Roma, not to enter into contact with them in order to avoid psychological pressure on their part and never to invite them home. The article also recommended that readers should immediately contact the police if they spotted a suspicious Gypsy.[24] In 2013, the Governor's Office in Bursa, Turkey, issued an

[22] See E/CN.4/Sub.2/AC.5/2005/2, para. 21.

[23] See A/HRC/28/64.

[24] See http://adcmemorial.org/wp-content/uploads/SOVA_ADCM-IPHR_FIDH_RussianFederation_CERD82.pdf, p. 33.

official report on the situation of Roma in the city, using denigrating language and likening Roma to criminals.[25]

27. The Special Rapporteur is also concerned about discriminatory stereotypes and hate speech against Roma women, including depictions of them as particularly fertile or promiscuous, which expose them to different forms of gender-based violence, including forced sterilization.[26] To avoid exposing Roma women to abuse, sterilization procedures must be based on clear legal provisions which ensure full, free and informed consent.

C. Pillar 3: equality and non-discrimination

28. The substandard living conditions of Roma in Europe are well-documented.[27] Between 70 and 90 per cent of Roma report living in conditions of severe material deprivation. Exclusion from formal schooling remains widespread throughout Europe. Even in those countries where a majority of Roma children complete primary school, most do not obtain either a vocational certificate or a secondary qualification.[28] In South-Eastern Europe, the participation of Roma in education beyond primary school is dramatically lower than that of the majority population, with only 18 per cent of Roma attending secondary school compared to 75 per cent of the majority community, and less than 1 per cent of Roma enrolled in university.[29] Regarding health, European Roma are disproportionately unvaccinated, have poorer than average nutrition and experience higher rates of infant mortality and tuberculosis. Life expectancy among European Roma communities is reportedly significantly lower than among non-Roma communities.[30] Similar marginalization exists with regard to employment. In 12 surveyed European Union countries, fewer than one out of three Roma were reported to be in paid employment.[31] The Special Rapporteur welcomes the commitment of the European Commission to start infringement proceedings in cases in which European Union member States are not meeting their commitments under the Racial Equality Directive, and emphasizes that the Commission should more actively pursue that in order to secure better outcomes for European Union Roma.

29. Outside Europe, research indicates that Roma face similar challenges. Living conditions in the Roma villages in central and southern Iraq are reportedly among the most deplorable in the country. Many Roma live in windowless mud houses without electricity, clean water, health care or adequate food, and are cut off from social security services. In Brazil, many Roma settlements reportedly have no electricity and lack access to safe drinking water and sanitation, despite the fact that some families have been living there for over 20 years.

30. Access to education continues to be a major obstacle for all Roma. The Government of Argentina has recognized the high levels of illiteracy and school dropout of Roma children.[32] In Brazil, official data on literacy and/or school attendance of Roma children are

[25] See www.errc.org/cms/upload/file/ec-progress-report-turkey-2014.pdf, p. 6.

[26] See A/HRC/24/21, p. 17, and www.who.int/reproductivehealth/publications/gender_rights/eliminating-forced-sterilization/en/, pp. 4–5.

[27] See http://fra.europa.eu/en/publication/2011/housing-conditions-roma-and-travellers-european-union-comparative-report.

[28] See http://fra.europa.eu/en/publication/2012/situation-roma-11-eu-member-states-survey-results-glance.

[29] See www.unicef.org/ceecis/UNICEF_ROE_Roma_Position_Paper_Web.pdf, p. 16.

[30] See http://ec.europa.eu/health/social_determinants/docs/2014_roma_health_report_en.pdf.

[31] See http://fra.europa.eu/en/publication/2012/situation-roma-11-eu-member-states-survey-results-glance.

[32] Responses from Argentina and the national human rights institution of Argentina to the questionnaire.

lacking, but civil society organizations reported that very few Roma children living in camps have ever been to school, and estimate that 90 per cent of the Roma living in camps in Curitiba city are illiterate. Prejudice has also been identified as an obstacle for accessing public schools in Brazil, where Roma children are reportedly not given the chance to enrol on the pretext of a lack of space. A representative of the United Nations Children's Fund (UNICEF) has emphasized that teachers' biased attitudes towards *Lyuli* children in Central Asia may result in violence at school. The illiteracy rate among Iraqi Roma is very high and many Roma children there are forced to take on irregular jobs or resort to begging. In Lebanon, 68 per cent of school-aged children reportedly do not attend school because of significant obstacles such as discrimination, legal and economic barriers, leading to street labour becoming a significant trend among Dom children.[33]

31. Roma face significant discrimination at all stages of access to labour markets, and the rate of unemployment among Roma is often high. When they do have access to labour markets, they are often offered short-term or low-skilled employment and are subject to prejudice. In Azerbaijan, for 90 per cent of Roma families living in the Nasiminskiy and Suraxani districts of Baku and from the Yevlakh region, begging is their main livelihood. In Belarus, only 9 per cent of Roma are employed.[34] Central Asian Roma are reported to survive in conditions of poverty and deprivation, forced into begging and a semi-nomadic lifestyle. In 2004, the unemployment rate among the more than 3,500 Mugat Roma living in the Osh region of Kyrgyzstan was 90 per cent.[35] In Lebanon, Dom communities often work in the informal sector or are engaged in unskilled labour, and monthly family income levels among the Dom are extremely low.[36]

32. The Special Rapporteur regrets the lack of comprehensive health indicators and the scarce evidence, including information on reproductive, maternal and child health, for assessing the health situation of Roma outside Europe. Poverty, lack of identification documents and lack of transportation from remote areas to health-care facilities all impact on Roma health, which can be compounded by poor living conditions, such as living in proximity to garbage dumps or polluted rivers. Factors precluding Roma access to health care across the regions include Roma patients being refused medical treatment, having no access to emergency services, being subject to verbal abuse, or being segregated in hospital facilities.[37] Furthermore, lack of access to health care may result from indirect discriminatory practices when Roma have to provide identity or residency documents in order to register and qualify for health-care benefits.

33. The Special Rapporteur also draws attention to particular groups of Roma who may be victims of multiple and intersecting forms of discrimination. While many Roma migrate for the full range of reasons that all persons chose to migrate, including to seek new opportunities, the poverty Roma experience in their countries of origin, as well as racism, discrimination and marginalization, are often important push factors. Moreover, once in a destination country, Roma migrants often experience discrimination on multiple grounds, including as Roma and as migrant non-citizens. In that regard, the Special Rapporteur expresses concern about the targeted expulsions of Roma migrants, sometimes undertaken without their free, full and informed consent, including to countries where they are likely to face discrimination. In 2010, about 8,000 Roma were reportedly expelled from France, and

[33] ILO and others, *Children living and working on the streets in Lebanon* (see note 7 above), p. 64.
[34] Response from Belarus to the questionnaire.
[35] See www.fidh.org/IMG/pdf/ADC_ADCM_FIDH_Russianfederation_CESCR46.pdf, p. 35.
[36] Terre des Hommes, *A Child Protection Assessment* (see note 7 above), p. 8.
[37] See www.euro.who.int/__data/assets/pdf_file/0006/115485/E94018.pdf, p. 227.

cases of the expulsion of Roma from Denmark, Germany, Italy and Sweden were also reported at that time.[38]

34. Roma women and girls may also be vulnerable to multiple, intersecting forms of discrimination and to violence, including gender-based violence and trafficking. Roma women are also allegedly stereotyped as promiscuous, which exposes them to a heightened risk of exploitation and sexual and gender-based violence.

35. Internally displaced persons (IDPs) of Roma origin experience specific challenges in accessing basic rights, including housing, land and property, water and sanitation, health services, employment, education and participation in public and political life. During the ongoing conflict in Ukraine, Roma IDPs have been increasingly marginalized and have limited access to even the most basic services.[39] The Special Rapporteur on the human rights of internally displaced persons reported in 2014 that Roma in the Balkans were among the region's most vulnerable IDPs.[40]

36. Statelessness also disproportionately affects Roma, who despite being born in or having long-standing ties to a country, speaking the local language and having no other country of citizenship, often have no access to nationality.[41] Lack of documentation also hampers not only Roma political participation, but also access to services, thereby reinforcing the vicious circle of poverty and marginalization. An NGO report to the Committee on Economic, Social and Cultural Rights on Ukraine indicated that up to 40 per cent of Roma in the Odessa region lack at least one of the documents necessary to access a range of services.[42] In the Russian Federation, lack of personal documentation prevents Roma from accessing employment, social allowances and health care, and from voting or accessing education in some schools due to discriminatory practices of school authorities.[43] In 2004, the Committee on the Elimination of Racial Discrimination expressed concern about allegations concerning discrimination faced by Roma with regard to birth registration and access to schools for their children in Brazil.[44]

D. Pillar 4: the right to effective participation

37. The effective and meaningful participation of Roma in the political arena is a pivotal element in breaking the vicious cycle of stigma, discrimination and marginalization. The right to effective participation is affirmed in article 25 of the International Covenant on Civil and Political Rights,[45] and reiterated in the Declaration (arts. 2, 4 (5) and 5 (1)). The commentary to the Declaration further establishes that the right to participate in all aspects of the life of the larger national society is essential, both in order for persons belonging to minorities to promote their interests and values and to create an integrated but pluralist society based on tolerance and dialogue (E/CN.4/Sub.2/AC.5/2005/2, para. 35).

38. Despite those clearly defined international standards, Roma remain underrepresented or not represented in the public administrations, institutions and political parties of many

[38] See A/HRC/17/40 para. 20.
[39] See A/HRC/28/64/Add.1 and www.ohchr.org/Documents/Countries/UA/9thOHCHRreportUkraine.pdf.
[40] See A/HRC/26/33/Add.2, para. 20.
[41] See A/HRC/23/46/Add.3.
[42] See www.errc.org/cms/upload/file/ukraine-cescr-march-2014.pdf.
[43] See CERD/C/RUS/CO/19, p. 9.
[44] See CERD/C/64/CO/2, para. 17.
[45] See also Human Rights Committee, general comment No. 25 (1996), para. 5.

States within Europe.[46] The Special Rapporteur has found that no comparable studies or research have been conducted in other regions, nor did she receive relevant information from non-European States. Without information to the contrary, and given their marginalized status, she can only infer that Roma outside Europe experience comparable, if not heightened, political exclusion.

39. Roma may be intentionally or de facto restricted from participation. Barriers include the lack of political will to dismantle structural discrimination, including the persistence of negative stereotypes assuming that Roma have no interest and no skills for engaging in politics.

40. Exclusion from public and political life must therefore be seen as both a cause and a consequence of the lack of enjoyment of economic and social rights, including lack of education opportunities, poverty, substandard living conditions and language barriers. The Special Rapporteur also underlines how the widespread fragility of Roma individuals' legal status impedes political participation. For example, in the Middle East, some Dom individuals are reportedly unable to pay hospital fees when their children are born, so no birth certificate is issued and the possibility of securing citizenship is denied.

IV. Positive developments

41. The Special Rapporteur notes that, due to the scant or total lack of information received from countries outside Europe, it was difficult for her to provide a balanced assessment of initiatives regarding Roma programmes across the regions. Nevertheless, she attempts to highlight some key examples using the pillar framework.

A. Pillar 1: preventing and addressing violence against Roma

42. Although not all European States officially recognize 2 August as the International Day of Commemoration in Memory of the Victims of the Holocaust, the Special Rapporteur is pleased that the European Parliament has recently adopted a resolution on recognition of the memorial day of the Roma genocide during the Second World War and that that many States are moving in that direction.[47] In order to better recognize the victims of the Roma genocide and to improve understanding of the situation of the Roma in Sweden, in 2014 the Government published a white paper highlighting abuses and rights violations of Roma throughout the twentieth century and showing the negative stereotyping and discrimination they continue to face.

43. In 2014, ternYpe, the International Roma Youth Network, and its partners organized a conference and youth event gathering 1,000 people from 25 countries to raise awareness among young Europeans, civil society and decision makers about the Roma Holocaust, as well as about anti-Gypsyism in the context of racism, hate speech and extremism in Europe.

44. The European Commission programme, Strategies for Effective Police Stop and Search project was designed to improve police-minority relations through more accountable use of policing power. It has been implemented with police and Roma in Bulgaria, Hungary and Spain and has proven effective in improving police relations with Roma, producing more efficient policing activities and increased legitimacy and trust.

[46] See www.errc.org/cms-upload/file/roma-rights-1-2012-challenges-of-representation.pdf

[47] Council of Europe, Ad hoc Committee of Experts on Roma issues, "Overview on the recognition of the genocide of Roma and Sinti and on the officialisation of the date of 2 August as a commemoration day for the victims of World War II in Member States of the Council of Europe" (2013).

45. In Canada, in order to reduce discriminatory policing behaviours, in 2011–2012, training on Roma culture was delivered, as part of the Hate Can Kill project, to Ontario police, including information about the Roma Holocaust, the racially motivated violence experienced by Roma and the lack of trust in police authorities among Roma communities. In parallel, Roma families and young people were also educated on what constitutes a hate crime, on relevant legal instruments and on the importance of reporting hate crimes to the police. Following that training, in 2012 both the Toronto Police Force and the Hamilton Police Force recorded hate crimes reported by people of Roma identity.

B. Pillar 2: protection and promotion of minority identity by combating stereotypes and prejudice

46. In Hungary, the documentary film series "Mundi Romani – The World through Roma Eyes" is a co-production of the Romedia Foundation. Each episode presents a different aspect of Roma culture in locations in Europe, the Middle East, Asia and the Americas. The series provides insights into Roma culture and was nominated for and received a number of local and international prizes.

47. Tallinn University in Estonia is conducting a study on stereotypes of various nationalities in Estonian online media with the objective of mapping and analysing stereotypes of individual nationalities. Additionally, the exhibition "We, the Roma", which reviews Estonian Roma history, culture and everyday life, opened in October 2013 and has since toured the country and abroad. It was shown at the Estonian Embassy in Helsinki and will open in Budapest in 2015.[38]

48. The Council of Europe has launched an awareness-raising campaign entitled "Dosta!", which emphasizes the value of Roma for societies through an interactive website, on television, in school projects and training for the media and teachers. It also awards a prize to local authorities that have taken steps to uphold and protect the rights of Roma. The Government of Latvia informed the Special Rapporteur that, in order to implement the "Dosta!" campaign, its Ministry of Culture, together with the Latvian Centre for Human Rights, would organize an event entitled "Latvian Roma – between past and future" in April 2015 in Riga, aimed at eliminating negative stereotypes about Roma and promoting intercultural dialogue.[39]

49. Since 1991, the Museum of Romani Culture in Brno, the Czech Republic, has been dedicated to the history and culture of Roma. The aim is to educate the younger generation, to promote better appreciation and understanding of the roots of Roma identity and to fight xenophobia and racism.

50. The University of Texas is home to the first university Romani Studies programme, and has become the leading institution in the United States of America for studies on Romani history, language and culture. The programme provides scholarships to Roma for educational qualifications at any level and houses the Romani Archives and Documentation Center, the largest collection of Romani materials in the world.

51. In Brazil, 24 May was declared National Roma Day by Presidential Decree in 2006 and has been acknowledged by Roma communities as an important public recognition of the existence of the Brazilian Roma community.

[38] Response from Estonia to the questionnaire.
[39] Response from Latvia to the questionnaire.

C. Pillar 3: equality, non-discrimination and recognition of anti-Gypsyism

52. Although just a few decades ago Roma issues were almost absent from international discussions, the issue of discrimination against Roma, including anti-Gypsyism, has gained increasing visibility. The European Union has developed a Framework for National Roma Integration Strategies, and now holds an annual meeting of the European Platform for Roma. Its 2013 recommendation on effective Roma integration measures broke new ground, as the first European Union instrument targeted at combating discrimination and prejudice against Roma, including multiple forms of discrimination. In addition, there is an explicit commitment by the European Union to assist Turkey and the Western Balkans in developing and implementing long-term, sustainable programmes to address the situation of Roma, which is also an aspect of accession negotiations. Within the Council of Europe, a Special Representative for Roma Issues has been appointed.

53. In Spain, the ACCEDER programme has adopted a multidimensional approach to tackling discrimination against Roma by directly training Roma to increase their employability and by involving other actors essential to eliminating barriers for Roma to access the labour market, including the private sector, policymakers and society at large.

54. The National Institute to Combat Discrimination, Xenophobia and Racism (*Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo* – INADI) of the Government of Argentina coordinates the "Discrimination Map" project in collaboration with several universities. In 2013, the situation of the Roma was specifically addressed and Roma were found to be among the most discriminated groups in Argentina. One priority of INADI is establishing a dialogue with the Roma community in order to better understand their needs and challenges.[50] INADI also sponsored a book on Roma history, legends and traditions and the documentary film "Roma – Gelem, Gelem" in 2015 with the goal of introducing a shift at the cultural level to combat racism against Roma.

55. In order to address the underreporting by Roma of incidents of discrimination, the Portuguese equality body has developed an informal complaints procedure whereby complaints can be submitted on a website or sent by e-mail to any of the equality body council members or through Roma organizations. That method has proved an effective way of overcoming mistrust and has seen an increase in reports of discrimination filed by Roma.

56. The Finnish Ombudsman conducted a research study to identify the key issues facing Roma communities in Finland. The survey was a response to the identified lack of data on discrimination experienced by Roma. Better data is expected to enable national authorities to intervene more effectively in cases of discrimination experienced by Roma, to help them formulate concrete proposals for action to reduce the discrimination Roma face in various aspects of life, and to improve the position of Roma within society.[51]

57. In Colombia, Decree 2957 of 2010 was adopted to set up a legal framework for the protection of the rights of Roma in Colombia, recognizing collective rights for Roma people. The same year, the National Commission for Dialogue for Roma People (*Comisión Nacional de Diálogo para el Pueblo Rom*) was created to coordinate action between governments and local communities.

[50] Response from Argentina to the questionnaire.

[51] Response from Finland to the questionnaire.

D. Pillar 4: the right to effective participation

58. The European Union has recognized that participation of Roma individuals and communities cannot be reduced to occasional discussions, but must promote the empowerment and active involvement of Roma, including through supporting Roma NGOs to be effective.[52] The 2015 European Platform for Roma Inclusion provided an opportunity for participatory, interactive, operational-level discussions among all stakeholders, including Roma individuals and grassroots organizations.

59. Portugal has established the Project for Municipal Roma Mediators, providing intercultural training to 15 Roma mediators which led to their inclusion in 18 local municipalities. The objective was to provide Roma inclusion-related services, guaranteeing the establishment of close links between local services, organizations and local Roma communities.[53]

60. In Brazil in 2015, the Commission on Minorities and Human Rights of the Congress held a public hearing to discuss policies aimed at protecting the rights of the Roma ethnic minority in Brazil. In addition, the Secretariat for the Promotion of Social Equality recently organized a National Week on Roma. The initiative, which gathered over 300 Roma from different regions, members of civil society organizations and government representatives, facilitated discussions about challenges in relation to Roma access to health care, housing, education, social and culture programmes. The programme adopted a set of recommendations and launched a guide on public policies aimed at raising awareness of Roma rights in Brazil.

61. The Government of Colombia consulted with Roma communities in the context of drafting national development plans for the period 2014 to 2018 and committed to implementing strategies to increase Roma visibility, improve their quality of life and provide for improved access to their social, economic and cultural and political rights. In Argentina, a local Roma NGO has been successful in initiating dialogues between civil society and the State, which has proved to be key in promoting the visibility of Roma culture.[54]

62. In Bulgaria, under the "Thank you, Mayor!" campaign, a grass-roots organization invested in capacity-building initiatives for local Roma advocacy groups. The campaign mobilized local activists and stakeholders, empowering them to develop and implement, in partnership with local administrations, successful Roma inclusion strategies in 12 municipalities. The project demonstrates how inclusive dialogue between Roma communities and local municipalities and a bottom-up approach can produce concrete commitments from local administrations.

V. Challenges in the field of policy and programming on Roma rights: lessons learned

63. Despite a number of good initiatives that seek to address Roma disadvantage, Roma communities worldwide still face situations of extreme poverty and marginalization across a wide range of human rights indicators. In Europe, Roma still experience heightened levels of disadvantage and marginalization.[55] Outside Europe, the Special Rapporteur regrets that

[52] See http://ec.europa.eu/justice/discrimination/files/ec3089_en.pdf, para. 41.
[53] Response from Portugal to the questionnaire.
[54] Response from Argentina to the questionnaire.
[55] A 2014 European Union report found that "there has not been much effective progress in any of the

very little has been done to acknowledge the disadvantage experienced by Roma and few policies have been developed to address those concerns.

64. The Special Rapporteur thus believes it is necessary to reflect on the lessons learned, both globally and in particular from the European experience, to understand better why existing approaches have not managed to bring about structural change. Although she recognizes that every Roma community is unique, and there is no blanket approach that will accommodate every community, she believes that drawing some general lessons from real examples may be helpful for all regions looking forward.

A. Lack of accurate data

65. Worldwide, comprehensive data on the situation of Roma communities has never been collected. Even in Europe, where more robust efforts are made than elsewhere, research indicates that Roma populations remain undercounted. For example, discrepancies between official statistics and unofficial estimates of Roma populations across 12 countries in Europe range from 45 to 99 per cent.[36]

66. Outside Europe, there are major gaps with regard to identifying and understanding Roma identity. Many States still continue to deny the existence of Roma as a minority group within their populations, or consider them outsiders, migrants or foreigners.[37] When statistics do exist at the national level, they are often based on censuses, but many Roma do not disclose their identity in census surveys due to a lack of inclusion of the category of Roma as an identity within the census, a reluctance to identify as Roma for fear of being discriminated against, or a lack of options for indicating multiple identities.

67. Those discrepancies call into question how well States have developed procedures that allow the expression of Roma ethnicity in a way that best reflects personal identities and embraces the principle of self-identification. The Special Rapporteur therefore notes that it is essential that all States make an effort to provide meaningful and respectful ways to encourage Roma communities to self-identify in order to generate more accurate data on Roma communities worldwide.

68. The Special Rapporteur further notes that the lack of accurate data on Roma populations has important consequences and directly impacts the ability to develop policies and programmes that comprehensively address the issues faced by Roma groups. Disaggregated data allows inequalities to be revealed objectively and demonstrated statistically, and provides clear markers by which progress towards targets can be monitored and evaluated. The lack of accurate data in turn contributes to a lack of evidence-based programmes building on clear indicators. Indeed, a recent European Union report acknowledged the impact of the lack of disaggregated data for Roma programming.[38]

B. Lack of political will, including a reluctance to address anti-Gypsyism

69. Despite international standards prohibiting discrimination, stakeholders across the regions pointed to the absence of political will as a key factor explaining the insufficient implementation of those standards in the Roma context.

challenges identified". See http://ec.europa.eu/justice/discrimination/files/com_2009_2014_en.pdf.

[36] Open Society, "No Data No Progress" 2012, p. 29.

[37] See CERD/C/HUN/CO/20-22, para. 13.

[38] See www.romadecade.org/cms/upload/file/9765_file1_decade-intelligence-report.pdf, p. 6.

70. In the fight against anti-Gypsyism and discrimination, political will must be actively encouraged. While much has already been achieved at the international and regional levels, there is a gap at the national and local levels, which remain crucial for achieving meaningful change for communities. Unfortunately, action taken to address Roma disadvantage often still depends heavily on the personal commitment of the particular political leader in power. Such an approach does not institutionalize anti-discrimination as a political goal, but rather reduces it to a subjective choice dependent on the goodwill of individual political actors. Moreover, as Roma are a disenfranchised minority group, they will often have little political influence or negotiating power at the local level. If leaders commit to combating discrimination against Roma as a national priority, that will be one important way to provide local politicians with a political constituency to focus on Roma rights.

C. Lack of a multisectoral, human rights-centred approach in policy development

71. The marginalization experienced by Roma is often interconnected with disadvantage in the area of economic and social rights, often stemming from, or leading to, further impediments in civil and political rights and vice versa. However, the Special Rapporteur has observed a tendency of Roma programmes to focus on short-term, issue-specific projects that fail to adopt an integrated approach that addresses multisectoral disadvantage. Many measures and instruments focus exclusively on one policy area and are delivered through uncoordinated projects with insufficient connection to other, interconnected policies and funds. For example, housing programmes that tackle issues of adequacy, including ghettoization and segregation, that are not linked to employment opportunities will have little prospect for long-term sustainability. Comprehensive solutions should take account of intersecting discrimination that Roma face and ensure that programmes are developed in genuine consultation with affected communities.

72. There is also an unfortunate tendency to compartmentalize the so-called "Roma issue" into the category of poverty alleviation, and to view Roma issues through the exclusive lens of economic and social rights. This can lead States to focus solely on programmes that address questions of housing, health care, employment and education. While such projects are critical to overcoming key areas of Roma disadvantage, this narrow approach fails to incorporate an interconnected understanding of human rights and may also further entrench the perception of Roma as impoverished beneficiaries of social support rather than active rights holders. It also excludes other segments of Roma communities, including middle-class Roma who may want to focus on their rights to political and public participation or to culture.

73. The Special Rapporteur further observes that many policies and programmes fail to adequately incorporate combating racism and anti-Gypsyism in their programming goals. The Special Rapporteur reiterates that there are too many policies based exclusively on improving Roma access to material or social benefits, including educational and/or vocational training. Such policies, she warns, treat symptoms only and do not address the root causes of disadvantage, which lie within deep-seated discriminatory attitudes that have become entrenched over generations. She therefore emphasizes the need to better incorporate anti-discrimination as an overarching element in all strategies and programmes affecting Roma, including through outreach to non-Roma groups on non-discrimination and equal treatment.

D. Insufficient Roma participation

74. Most stakeholders consulted agree that the crucial issue of the political participation of Roma has been neglected by most policymakers and institutions across the regions. Despite numerous new programmes and the unprecedented achievements of Roma intellectuals, professionals and activists around the world, Roma remain largely underrepresented or unrepresented in local and national bodies, and remain peripheral in regional and international decision-making bodies, including in institutions explicitly established to protect and promote their rights.

75. Another concern expressed is the insufficient engagement of Roma communities in the design, delivery and monitoring of programmes and policies affecting them. Even in Europe, where efforts have been made to include Roma better, a recent evaluation showed that Roma participation is often reduced to consultations, and meaningful and effective participation remains a "distant objective".[59]

76. The Special Rapporteur observes that there are often underlying attitudes that contribute to the lack of focus on empowerment of Roma communities and organizations. They can be outright discriminatory attitudes, such as when decision-making authorities adopt the paternalistic attitude that they are better equipped to make decisions on behalf of Roma. However, there are also more subtle forms of bias, including the tendency to focus on Roma as passive victims of discrimination, which may have the effect of perpetuating erroneous assumptions about their inability to contribute to society. This in turn hampers the shift from a perception of Roma as primarily passive victims of discrimination to an acknowledgment of their role as active agents of transformation who can participate in policy decisions that affect them. The Special Rapporteur notes that effective, meaningful participation must be a transformative process that becomes an inclusive experience, facilitating Roma involvement, empowerment and active citizenship. Such a participatory approach must also guarantee that those whose voices are rarely heard are empowered, including Roma women and young people.

77. Roma organizations at the local level are often institutionally weak and often have few human and technical resources. As a result, they may lack the capacity to advocate effectively on issues that are important to them or they may not be able to liaise effectively and cooperate with other Roma organizations. These factors affect organizations' ability to find consistent, meaningful opportunities for engaging in policy design, implementation and monitoring. Efforts must be made to strengthen Roma rights organizations, not only through better funding and support, but also through scholarships and education initiatives to ensure that Roma young people are equipped with the necessary skills to become active advocates for their own communities.

E. Need for improved access to complaint mechanisms

78. In order to better address the discrimination Roma face, including anti-Gypsyism, there is a need for complaint mechanisms of which Roma are aware, to which they have access and in which they have confidence.

79. While the Special Rapporteur acknowledges that article 13 of the Racial Equality Directive requires European Union member States to establish a body responsible for the promotion of equal treatment, she regrets that research indicates that knowledge about and

[59] See www.romadecade.org/cms/upload/file/9765_file1_decade-intelligence-report.pdf, p. 6.

use of those mechanisms by Roma is limited.[60] Even at the international level, the Special Rapporteur receives few communications from Roma regarding their rights, and although there have been a number of high-profile Roma rights cases at the European Court of Human Rights,[61] there have been relatively few such cases when considered in relation to the significant disadvantages Roma in Europe face. Outside Europe, she has not received any information about Roma accessing complaints mechanisms to address their concerns.

80. In this vein, she insists that States must improve knowledge among Roma about their rights, including about discrimination, and their awareness of complaint mechanisms at both the national and international levels. States should also develop measures that enable Roma complainants to have easy access to such mechanisms. It is equally important that the recommendations of any such mechanisms be swiftly implemented in order to promote a sense of justice and faith in the processes concerned.

F. Limited recognition of history and lack of measures to address long-standing prejudices and racism

81. The dispossession of and discrimination against Roma over centuries has led to a situation of intergenerational disadvantage that has often engrained hopelessness in Roma individuals and communities. Across the regions, however, the Special Rapporteur observes that insufficient effort has been made to foster long-term durable intercultural dialogue or to develop initiatives that build trust and foster relationships of mutual respect.

82. The Special Rapporteur believes that much can be achieved through recognition of the cultural contributions of Roma. Positive initiatives in this regard include the promotion and celebration of Romani culture through national history statements, inclusion in school curricula, national days of celebration and the creation of museums and exhibitions. Furthermore, historical narratives are central to the identity of Roma communities, and a better understanding by the majority society of the richness of Roma culture is an essential demand of Roma communities in every region. Nevertheless, the history and contributions of Roma culture are rarely adequately acknowledged or properly promoted. Rather, what remain pervasive are biased, distorted stereotypes of Roma that contribute to a sense of alienation and exclusion, especially among young people.

83. The lack of recognition of the fate of the Roma under the Nazi regime is often referred to as the "forgotten Holocaust" and has been identified as a major obstacle to restoring dignity and respect for the human rights of Roma worldwide. Although 2 August is officially Roma Holocaust Remembrance Day, there is a need to continue to bring heightened public attention to ensuring that the Roma Holocaust becomes part of public consciousness.

G. Insufficient funding, and bureaucratic obstacles

84. The Special Rapporteur notes the importance of direct, efficient funding mechanisms for Roma organizations. However, even within the European Union, where significant funds are dedicated to addressing Roma disadvantage, challenges remain. Firstly, within the European Union, not all of the available funds for Roma are being spent or efficiently invested and the level of expenditure on this issue, especially by new member

[60] See http://fra.europa.eu/sites/default/files/fra_uploads/854-EU-MIDIS_RIGHTS_AWARENESS_EN.PDF, pp. 9–10.

[61] See www.echr.coe.int/Documents/FS_Roma_ENG.pdf.

States, is very small."[85] This results in many cases in funds being directed towards short-term projects that are incapable of achieving any long-term, sustainable impact, therefore reducing their positive impact on Roma communities.

85. Secondly, within the European Union, no monitoring mechanisms are in place to evaluate how much money is invested in projects that directly or indirectly benefit Roma people. The Special Rapporteur warns that without such accountability, there is the risk of contributing to the perception that in the European Union, too many economic resources are invested in Roma with few results, which in turn contributes to negative stereotypes about Roma.

86. Concerns have been raised about technical and substantial challenges facing Roma organizations in accessing European Union funding, including overly burdensome bureaucratic requirements, constantly changing rules and formalities and liquidity and cash flow issues. In addition, the level of expertise and the financial resources needed to implement European Union programmes are often too onerous for smaller grass-roots organizations. As a result, large funding sources are often absorbed by large non-Roma recipients and just a small percentage reaches Roma communities.

87. The Special Rapporteur regrets that there is a lack of official information on funding dedicated to measures to improve the situation of Roma communities outside Europe, indicating that they are unlikely to exist. The Special Rapporteur therefore calls on all Governments to dedicate sufficient funding to improving the situation of Roma.

VI. Conclusions and recommendations

88. **The Special Rapporteur takes note of efforts to fight anti-Roma discrimination and address Roma marginalization and disadvantage. However, while positive developments and good practices have been identified, her global study has revealed the deep-rooted problems of racism and extreme marginalization experienced by Roma worldwide, and has highlighted the ongoing invisibility of many of these communities' struggles. Her report has also exposed the underlying structural discrimination that Roma face, including the interrelation between anti-Gypsyism and the socioeconomic marginalization and political exclusion that Roma experience.**

89. **The Special Rapporteur welcomes the numerous recommendations of other human rights mechanisms targeting Roma, urges all States to take immediate steps towards implementing them, and adds the following recommendations.**

Steps to combat discrimination, anti-Gypsyism and exposure to violence

90. **States should implement fully the Declaration and other relevant regional and international human rights standards, including comprehensive anti-discrimination legislation that prohibits all forms of discrimination, and identify State agencies tasked with monitoring and combating discrimination.**

91. **States should pay particular attention to the ways in which memory and mourning processes related to the Roma Holocaust are framed, collected and disseminated, including through the media and formal and informal education systems. In this regard, she recalls the importance of including Roma in all such endeavours, including at all official ceremonies commemorating victims of the Second World War.**

[85] See http://europa.eu/rapid/press-release_MEMO-10-121_es.htm

92. States must ensure that authorities effectively and promptly investigate any crimes against Roma individuals and communities, including by investigating any alleged discriminatory motive behind the attacks. Police officers should refrain from using force during police operations, including in informal settlements, and all allegations of harassment or unlawful use of force by police should be thoroughly investigated.

93. States should take measures to monitor hate speech and incitement to violence against Roma, including in the media and social media, and respond appropriately, including by prosecuting perpetrators. States should collect data on hate crimes against Roma. Such data should include the reporting, investigation, prosecution and sentencing of the crimes. The data should be made publicly accessible, while respecting the right to privacy, in order to assist the development of policies to combat hate crimes against Roma.

94. Political parties should prohibit inflammatory, racist, anti-Roma rhetoric and ensure that public discourse does not perpetrate stereotypical, racist, hateful or discriminatory views about Roma. They should take effective action against such discourse.

95. The protection and promotion of the rights of Roma should be prioritized on the political agenda in order to demonstrate a serious political commitment to combating the causes and consequences of anti-Gypsyism and discrimination.

96. In order to address the root causes of anti-Gypsyism, the Special Rapporteur recommends that the history, culture and traditions of Roma, in particular the Nazi genocide, be taught in schools. Awareness-raising measures to inform non-Roma populations about Roma history, identity and culture should be integrated into all education efforts.

Guaranteeing the full enjoyment of the human rights of Roma: beyond the poverty approach

97. States must ensure that measures addressing the socioeconomic vulnerability of Roma are addressed not only through programmes addressing poverty and marginalization, but are part of a wider approach that tackles the widespread prejudice, discrimination and racist attitudes against Roma, including anti-Gypsyism.

98. The Special Rapporteur thus urges all relevant stakeholders to think outside the "poverty paradigm" and incorporate all aspects of minority rights into strategies that address Roma disadvantage, including the protection and promotion of Roma identity, language and culture and the guarantee of dignity and equality. Such programmes should guarantee that the specific needs of Roma women, as well as Roma with disabilities, lesbian, gay, bisexual, transgender and intersex persons, young people and older persons are heard and addressed.

99. There is a need for integrated approaches that combine measures in different policy areas, strengthen political will at the national and local levels in particular and build mutual trust and an openness to learn from past mistakes. Inclusion programmes should not be limited to material improvements; they should also contribute to the empowerment of both urban and rural Roma communities, strengthen dedicated institutional attention to Roma rights and encourage Roma leadership in order to break the vicious cycle of discrimination and marginalization. Such programmes should ensure that Roma groups most at risk of discrimination and/or social and economic exclusion are also targeted and empowered.

100. **Governments must ensure that sufficient funding is dedicated to improving the situation of Roma communities. Funds allocated at regional and national level, as well as other financial instruments, should be expended efficiently and directed to the local level.**

Effective Roma participation and representation at all levels of decision-making

101. **Creating conditions for the effective participation of Roma in all aspects of the life of the State, including in decision-making bodies, should be considered by States as an integral aspect of good governance and a key priority in efforts to ensure equality and non-discrimination.**

102. **Governments should ensure that Roma are represented at all levels of public institutions and bodies, including national parliaments, the civil service, the police and the judiciary. Where Roma leaders are visible, their work should be promoted and they should be supported to act as role models and raise awareness of Roma political participation.**

103. **National human rights institutions should put in place specific mechanisms to address Roma issues and recruit and retain Roma staff. They are encouraged to develop outreach programmes that increase Roma participation in political, economic, social and cultural life. They should ensure that Roma are both involved in and have access to their programmes, including complaint mechanisms, and ensure that materials are available in the Romani language.**

104. **Governments, the United Nations and its specialized agencies, and other international and regional organizations should mainstream Roma rights into all aspects of their programming and make efforts to include Roma within their staff.**

105. **Roma and pro-Roma civil society organizations play a crucial role in breaking down the barriers preventing the effective participation of Roma in all spheres of life. Stakeholders are encouraged to collaborate and support those organizations, including through providing adequate financial support.**

106. **Successful Roma-controlled programmes that address issues of health, education and other areas of concern in ways that are culturally appropriate and adapted to local needs should be supported and replicated.**

Role of the media

107. **Traditional and new media have the potential to promote intercultural dialogue between Roma and non-Roma communities. The media should promote non-stereotypical portrayals of Roma, including through providing greater visibility to Roma self-representation, history and culture.**

108. **The participation of Roma media professionals should be encouraged and programmes to train, recruit and support Roma media workers should be implemented. The media must guarantee that they do not contribute to or allow hate speech and incitement to hatred or violence.**

Data collection

109. **Data collection should be based on self-identification and take place in a sensitive manner, respecting privacy in accordance with international standards of data protection. Roma civil society, individuals and communities should be involved throughout the process, from designing data collection methods to collection and analysis of the data.**

Annexes

[English only]

Annex I

Questionnaire of the Special Rapporteur on minority issues to Member States

In answering the questions below, please consider that the term "Roma" "refers to Roma, Sinti, Kale and Travellers, and aims at covering the wide diversity of groups concerned, including groups that identify themselves as 'Gypsies'", in line with the definition provided by Human Rights Council resolution 26/4 (attached).

1. Please, provide specific information about the Roma communities living in your country. What is the estimated size of the Roma population? Are Roma communities concentrated in certain parts of the country? Please attach any relevant data.

2. Does your State collect socio-economic data such as poverty and unemployment rates, healthcare data, living conditions, educational levels, income levels or rates of economic participation disaggregated by different population groups, including Roma? What does such data reveal in regard to the situation of Roma? Please, attach relevant data if available. In the absence of such data what is the source of information your State relies upon to develop various measures and programmes for Roma inclusion?

3. Is there any ongoing national policy/strategy/action plan to ensure Roma inclusion in the political, social, economic and cultural life of your country? If so, please explain how these measures are developed, designed, implemented, monitored and evaluated in consultation with, and with the effective participation of Roma, including Roma women. If your State has already reported on similar issues to other international or regional organisations, please share existing relevant reports and/or documentation.

4. How strategies or policy measures for inclusion take into systematic consideration the specific conditions, situations and needs of Roma women, including in the areas of access to adequate education, healthcare and reproductive rights? Please attach the most relevant information including, if applicable, specific measures taken to combat segregation and/or multiple and intersecting forms of discrimination faced by Roma women, as well as the main measurable achievements in these areas.

5. Is there any available information and data about violence against Roma population, especially women and children? If yes, what are the different forms of violence they experience and what measures have been taken to assist, protect, and compensate the victims?

6. Has your Government identified the main priority areas for Roma inclusion? If yes, what are the main goals? Please provide relevant details in this respect, as well as an estimate of funds allocated on measures relating to national strategies and policies for Roma inclusion.

7. Does your Government monitor progress made in the area of Roma inclusion in the political, social, economic and culture life of the State? If so, what are the visible and measurable achievements of various efforts undertaken for Roma inclusion? Please provide details.

8. In the Government's view, if there are still persistent disparities among Roma and other population groups, what were the failures and what are the ongoing challenges to close the gap and achieve full inclusion of Roma? In which areas is there the biggest need to step up efforts?

9. Is Roma history and culture part of the national curriculum? Is the International Roma Day celebrated and if yes, how?

10. What channels for articulating, aggregating, and representing the interests of Roma, including through body/institution/unit or other establishments do exist in your country? If applicable, please indicate how such initiatives include staff or representatives from Roma communities.

Please provide any additional information relevant to Roma population that may be informative to the work of the Special Rapporteur on minority issues and the OHCHR

Annex II

Member States that responded to the questionnaire

Albania,* Argentina,* Belarus,* Bosnia and Herzegovina,* Cyprus, Ecuador,* Estonia, Georgia,* Germany,* Greece, Guatemala,* Hungary,* Ireland,* Kuwait,* Latvia,* Mauritania,* Montenegro, Portugal, Saudi Arabia, Serbia, Slovenia, Spain, United Kingdom, Uzbekistan.*

* Questionnaire received after deadline

Annex III

Questionnaire of the Special Rapporteur to national human rights institutions

1. Does your National Institution undertake work specifically relating to the promotion and protection of the rights of Roma? What particular activities relating to Roma is your National Institution involved in? Does your Institution have any strategic or action plan to address Roma issues?

2. Does your National Institution have a unit that deals with minority rights with sufficient dedicated expertise on Roma issues, or a focal point for Roma issues? Does your National Institution include staff members from Roma communities? Please provide details.

3. Does your National Institution monitor violations of the human rights of Roma and provide advice to the Government on compliance with national, regional and international human rights instruments? If so, please give concrete examples.

4. Does your staff receive training on how to counter racism and intolerance, discrimination, social exclusion and/or marginalization of Roma? Please share all relevant details and documentation.

5. Does your National Institution consider complaints and petitions concerning individual situations and, if so, does it assist Roma in gaining access to effective redress for human rights violation? Please provide details and examples.

6. In what ways are the views and opinions of the Roma communities taken into account in your work, and how are Roma able to participate in relevant aspects of your work, including through public consultations or seminars?

7. Does your National Institution apply a gender perspective throughout its activities? In the affirmative, how does it ensure the effective participation of Roma women to its work? Please give concrete examples.

8. Have your National Institution conducted surveys or collected disaggregated data relating to national or ethnic, religious or linguistic minorities, or otherwise produced reports concerning the Roma population? If so, please attach relevant documents.

Please provide any additional information relevant to Roma population that may be informative to the work of the Special Rapporteur on minority issues and the OHCHR.

Annex IV

National human rights institutions that responded to the questionnaire

Interfederal Centre for Equal Opportunities, Belgium; Office of the Ombudswoman, Croatia; The Danish Institute for Human Rights*, The Finnish Human Rights Centre; Commission consultative des Droits de l'Homme du Grand-Duché de Luxembourg; Malawi Human Rights Commission; The People's Advocate Institution, Romania*; the Slovak National Centre for Human Rights; The Equality and Human Rights Commission, United Kingdom

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* Questionnaire received after deadline

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai

Summary

The present report is the fourth by the Special Rapporteur on the rights to freedom of peaceful assembly and of association submitted to the Human Rights Council pursuant to Council resolutions 15/21 and 24/5.

In sections I and II of the report, the Special Rapporteur provides an overview of the activities he carried out between 1 March 2014 and 28 February 2015. In section III, he addresses legislation and practices concerning natural resource exploitation that present challenges to the exercise of the rights to freedom of peaceful assembly and of association.

The Special Rapporteur outlines his conclusions and recommendations to various stakeholders in section IV.

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I. Introduction

1. The present report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association is submitted to the Human Rights Council pursuant to Council resolutions 15/21 and 24/5. It covers activities carried out between 1 March 2014 and 28 February 2015 and addresses legislation and practices in the context of natural resource exploitation that violate the rights to freedom of peaceful assembly and of association. At the end of the report, the Special Rapporteur addresses recommendations to various stakeholders with a view to better promoting and protecting the rights under his mandate.

2. To prepare the present report, the Special Rapporteur convened an expert consultation in Bangkok on 15 and 16 December 2014. He also benefited from the responses of States and civil society entities to a questionnaire distributed on 17 December 2014. He regrets that he did not receive any responses from business entities. He is most grateful to all who contributed to his report with responses. In accordance with Human Rights Council resolution 15/21, he took into account relevant elements of work available within the Council and the United Nations system.[1]

II. Activities

A. Communications

3. The Special Rapporteur sent a total of 189 communications between 1 March 2014 and 28 February 2015. His observations on communications addressed to States and on the replies received are contained in an addendum to the present report (A/HRC/29/25/Add.3).

B. Country visits

4. The Special Rapporteur visited Oman from 8 to 13 September 2014 and Kazakhstan from 19 to 27 January 2015. He thanks both Governments for their cooperation before and during the visits. During the reporting period, the Special Rapporteur renewed the pending requests to Canada, Chile and India. He also made additional requests to Kenya, Nepal, the Republic of Korea and Singapore.[2] He is grateful to the Government of Kenya for extending an invitation, which he hopes to honour soon.

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[1] Country situations mentioned in the present report include cases that have been the subject of previous communications sent to Governments, as well as press releases and reports issued by special procedures mandate holders and high-level United Nations officials and reports from Member States, multilateral institutions and civil society organizations. The Special Rapporteur has also made use of responses to a questionnaire sent to Member States, associations and businesses on this topic. Available from www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/RepliesNaturalResourceExploitation.aspx#states.

[2] For more information on country visits, see www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/CountryVisits.aspx.

C. Participation in various events

5. The Special Rapporteur took part in the following events:

(a) Meeting with the Secretary-General of the Organization of American States, the Chair of the Permanent Council, permanent representatives to the organization and the Inter-American Commission on Human Rights in Washington, D.C. (9 April 2014);

(b) Expert consultation on the Special Rapporteur's report to the sixty-eighth session of the General Assembly in Istanbul (27 and 28 June 2014);

(c) Academic visit to Bujumbura (21 and 22 July 2014);

(d) Follow-up visit to Kigali (25 and 26 August 2014);

(e) Regional consultation with civil society activists from South and South-East Asia in Kathmandu and academic visit to Dhaka organized by the Asian Forum for Human Rights and Development (18–22 September 2014);

(f) Regional dialogue with Governments from the region of the Organization for Security and Cooperation in Europe organized by the Community of Democracies in Warsaw (22 October 2014);

(g) Round-table discussions and bilateral meetings with representatives of civil society from Latin America organized by the International Center for Not-For-Profit Law and the World Movement for Democracy, and meetings with the representatives of the Inter-American Commission on Human Rights and the Permanent Representative of Jamaica to the Organization of American States in Washington, D.C. (29 and 30 October 2014);

(h) Regional dialogue with civil society organizations organized by the Community of Democracies, the World Alliance for Citizen Participation and the International Center for Not-for-Profit Law in Pretoria (17 and 18 November 2014);

(i) World Assembly of the World Alliance for Citizen Participation, Johannesburg, South Africa (21–24 November 2014);

(j) Expert consultation to discuss the present report (15 and 16 December 2014) and regional consultation organized by the World Movement for Democracy in Bangkok (17 and 18 December 2014);

(k) Meeting with the Minister of Foreign Trade and Development Cooperation of the Netherlands and participation in the Dutch Ambassadors Conference at The Hague, Netherlands (28–30 January 2015);

(l) Planning meeting with various stakeholders organized by the Special Rapporteur in Kenya (18 and 19 February 2015).

III. Rights to freedom of peaceful assembly and of association in the context of natural resource exploitation

A. Background

6. The global economy relies heavily on the availability and exploitation of natural resources.[1] With the industrialization of emerging economies and the ever-increasing needs of older market-economy countries, the demand for natural resources has increased dramatically. With that demand has come a plethora of concerns relating to the sustainability of economic growth and its impact on the climate, the environment and, more generally, on human rights.

7. Increased demand for resources has resulted in the opening up of more areas for exploration and exploitation, especially in populated areas, leading to conflict between competing interests. By some accounts, between 93 and 99 per cent of 73,000 mining, logging, agriculture, oil and gas concessions in eight tropical forested countries were inhabited.[4] The same sources indicate that, for example, up to 40 per cent of the territory of Peru has been handed over by the Government to private for-profit entities to exploit natural resources and that in Liberia and in Indonesia 35 and 30 per cent, respectively, of the land is in the hands of the private sector for exploitation operations. The existence of widespread social conflict associated with natural resource exploitation is therefore not surprising. For example, in Peru, the Ombudsman's Office documented 211 social conflicts in the month of February 2015, 66 per cent of which were related to natural resource exploitation.[5] In Colombia, the Ombudsman's Office participated in 218 dialogues between mining companies, protestors and the Government.[6]

8. Moreover, many resource-rich countries suffer from low levels of development, particularly human development, endemic corruption and economic and political instability — the "resource curse". This, despite a widely shared understanding that natural resources are managed by Governments on behalf of their citizens: an understanding which many countries enshrine in law. The Constitution of Burkina Faso, for example, provides that citizens may petition individually or collectively against acts that harm the environment or the interests of communities.[7] A large proportion of the world's poor lives in resource-rich

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[1] For purposes of the present report, the Special Rapporteur takes a broad view of "natural resources", taking the term to encompass a wide range of materials, including land, water, soil, air, coal, oil, gas, other mineral and precious metal deposits, flora and fauna, forests and timber. Similarly, "exploitation" is understood to encompass a variety of activities, including extractive processes (mining, fishing, logging, etc.) and construction of mega-projects (dams, nuclear plants, hydro-electric facilities, wind farms, land reclamation, large-scale farming), that are intended to make use of natural resources, particularly for large-scale commercial gain. The Special Rapporteur also recognizes that conservation activities carried out with an accompanying commercial benefit, such as game parks and reserves, forests preserved to offset carbon emissions and the like, often raise the same concerns related to the exercise of peaceful assembly and association rights.

[4] Andrea Alforte and others, "Communities as Counterparties: Preliminary Review of Concessions and Conflict in Emerging and Frontier Market Concessions" (Rights and Resources Initiative, 2014). Available from www.rightsandresources.org/wp-content/uploads/Communities-as-Counterparties-FINAL_Oct-21.pdf.

[5] Defensoría del Pueblo (Ombudsman's Office), press note 041/OCII/DP/2015, 5 March 2015. Available from www.defensoria.gob.pe/portal-noticias.php?n=13353 (accessed 10 March 2015).

[6] Defensoría del Pueblo (Ombudsman's Office) Colombia, *Vigésimo Primer Informe del Defensor del Pueblo de Colombia al Congreso de la República* (Bogotá, Defensoría del Pueblo, 2013), p. 35.

[7] Response to questionnaire, Constitution of Burkina Faso, art. 30.

countries but does not share in the benefits of those resources because of inadequate governance. More than 80 per cent of the 58 resource-rich countries in the Resource Governance Index fail to meet satisfactory governance standards.

9. Citizen engagement in the natural resources sector is notoriously difficult, with some sectors, such as oil, gas and mining, presenting heightened risks of human rights abuses because they are especially lucrative. The State plays a significant role in regulating access to exploitation opportunities. Secrecy cloaks decision-making processes and outcomes; there is a lack of mechanisms through which interested parties may express their concerns; discussions are often highly technical; and, above all, the financial stakes are often massive. This opaque and lucrative environment presents ideal conditions for corruption to thrive, a challenge with which many resource-rich countries have to contend.

10. The Special Rapporteur believes that the rights to freedom of peaceful assembly and of association play a key role in opening up spaces and opportunities for genuine and effective engagement by civil society in decision-making processes across the spectrum of natural resource exploitation activities. These rights help foster increased transparency and accountability in the exploitation of resources and are basic prerequisites for the ultimate goal of securing substantive rights. Peaceful assembly and association rights can facilitate constructive dialogue, which is necessary given the shared interests and sometimes competing priorities that are intrinsic to exploiting natural resources.

11. When the rights to freedom of peaceful assembly and of association are restricted contrary to international human rights law standards, questions automatically arise as to how genuine consultation processes or decisions are and how valid is the expression of free, prior and informed consent of affected parties. While restricting these rights in order to streamline resource exploitation may seem tempting to States and corporations[8] in the short term, it can be costly in the long run and cause irrevocable damage. As the Special Rapporteur has previously noted (see A/HRC/26/29, para. 26), the failure to provide any outlet for excluded groups to air their grievances can be counterproductive and carry severe consequences. He believes that social conflicts experienced in the context of natural resource exploitation are a stark demonstration of the truth of this statement.

12. The overall political environment in a State can also have a profound impact on the exercise of peaceful assembly and association rights. States that generally do not respect or facilitate those rights are unlikely to be any more accommodating in the context of natural resource exploitation. In fact, the Special Rapporteur believes that the space to exercise peaceful assembly and association rights is often more limited in relation to natural resource exploitation because of the significant impact this sector has on the economies of resource-rich countries, the bottom lines of the enterprises involved and the potential for corruption. Having citizen engagement is, therefore, imperative throughout the decision chain right from the initial stages of the process when exploration potential is determined, through to exploitation activities and investment of revenue.[9] The rights to freedom of peaceful assembly and of association provide the necessary avenues for this engagement.

B. Key actors in the natural resource exploitation field

13. International human rights law places the primary obligation for the respect, protection and fulfilment of rights on the State. In the context of natural resource

[8] The terms "corporation", "company", "business enterprises" and "private sector" are used generically to refer to for-profit enterprises involved in exploitation operations, even if they are State-owned, unless otherwise indicated.

[9] See, e.g., the Natural Resource Charter.

exploitation, the obligations may appear to be somewhat distorted owing to the sometimes complex relationships that exist between Governments and the private sector. Governments may engage in for-profit ventures through State-owned or State-run companies, blurring non-profit and for-profit interests and the role of the State in ensuring a level playing ground for both sectors. Moreover, the close relationship that exists between Governments and the private sector is one that the Special Rapporteur has highlighted previously as creating, in some instances, undue advantages for business at the expense of other sectors of society (see A/69/365, paras. 10–12).

14. States are obligated to protect and facilitate the rights to freedom of peaceful assembly and of association in the context of natural resource exploitation, including by ensuring that business interests do not violate these rights. To discharge their duties in that respect, States should, among other things, enact robust national laws that stipulate the rights and responsibilities of all, create independent and effective enforcement, oversight and adjudicatory mechanisms, ensure effective remedies for violations of rights and promote awareness of, and access to information about, relevant policies and practices related to natural resource exploitation.

15. States also have an obligation to prevent conflict before it starts, including by creating a legal environment that promotes transparency and fairness. The area of land rights, for example, is often key. The absence of legal frameworks that clearly spell out land rights creates opportunities for arbitrary expropriation or land grabbing, which in turn can lead to conflict. Opaque procedures for granting exploitation licences and concessions aggravate the situation and often fuel social protests.

16. States that host natural resource exploitation operations ("host States") have to contend not only with powerful corporations exerting their influence, but also with the so-called "States of origin", whose economies stand to benefit from the taxes and other remittances arising from corporations' profits. States of origin will therefore make significant efforts to facilitate opportunities in foreign markets for companies domiciled in their territory. An indication of this elevation of business interests in international relations is that, in some countries, the trade and investment portfolios are being merged with the foreign affairs and development agendas of Governments. In principle, States have a legitimate interest in pursuing channels that open up business interests for their citizens. But undue deference to business interests at the expense of other legitimate interests, such as human rights, is a source of acute concern.

17. The central role of corporations in natural resource exploitation means that they can potentially wield enormous power and influence over host States, rendering authorities unwilling to intervene in their interests. Corporations gain access to the corridors of power and often have the ear of key officials (sometimes through unethical means) and are therefore in a position to influence decisions in their favour at the expense of opposing views of other interested parties, including affected communities. The increasing globalization of access to markets underscores the need to regulate the natural resource exploitation sector at the international level to ensure the preservation of all rights, including peaceful assembly and association rights.

18. The complexities of influence between the host State and States of origin is replicated among corporations, where parent companies domiciled in one State may have subsidiaries in other countries exercising various degrees of influence on the policies and practices of the latter entities. Furthermore, international and national financial institutions often have a significant stake in natural resource exploitation activities that they may be supporting financially. Their actions or inaction, primarily through the leverage they have as financiers, could have an impact on the human rights of affected communities, including peaceful assembly and association rights. The Special Rapporteur subscribes to the premise that international human rights law ascribes the primary duties to States, acting individually

or as members of multilateral institutions. These obligations apply within the territory of the State and extraterritorially. Similarly, non-State actors have responsibilities in relation to human rights, as will be discussed below.

19. In many cases, the most egregious violations of the rights to freedom of peaceful assembly and of association in the context of natural resource exploitation are committed against groups and individuals inhabiting regions far from centres of power, who are often at risk or already marginalized within society. They may lack access to information or the means of effectively advocating for their concerns, or they may be confronted with authorities are that are unable or unwilling to address their grievances. The ability to freely associate and to peacefully assemble are indispensable in this regard. Some of the categories of persons that require special attention in the context of the rights to freedom of peaceful assembly and of association and of natural resource exploitation are women (including women human rights defenders), Afro-descendants, indigenous peoples, peasant farmers, fisher folk and forest dwellers.

C. International legal and regulatory framework

20. A complex web of binding international law and voluntary standards and principles regulate and inform the human rights obligations of States and companies in the field of natural resource exploitation. In general, States are bound by international human rights law, while companies adhere on a voluntary basis to standards and principles drawn up by Governments, multi-stakeholder platforms or business forums. Those laws and standards cover a broad range of interests, many of which have implications for the rights to freedom of peaceful assembly and of association.

21. The rights to freedom of peaceful assembly and of association find expression at the global level in article 20 of the Universal Declaration of Human Rights and in articles 21 and 22 of the International Covenant on Civil and Political Rights.[10] The International Labour Organization (ILO) Convention concerning Freedom of Association and Protection of the Right to Organise, 1948 (No. 87), and the ILO Convention concerning the Right to Organise and Collective Bargaining, 1949 (No. 98), protect the rights of workers to freely establish, join and run organizations of their choosing without unjustifiable interference from the State. Workers are also protected from anti-union discrimination and guaranteed the right to collectively bargain.

22. Although States often refer to the permissible limitations embedded in the provisions and instruments cited above, the Special Rapporteur reiterates that the rights to freedom of peaceful assembly and of association should be viewed as the rule and the limitations as the exception (see A/HRC/20/27, para. 16). States may only limit the rights in strictly defined circumstances necessitated by narrowly defined "legitimate reasons".[11] Such restrictions must be prescribed by law and are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or

[10] Common articles 1(2) of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights guarantee the right of all peoples to freely dispose of their natural wealth and resources. There are also national, regional and international laws and standards relating to the rights of indigenous peoples, labour, the environment and natural resource exploitation activities, such as mining, forestry and fishing, which may impact the exercise of the rights to freedom of peaceful assembly and of association to varying degrees. More broadly, trade and investment agreements, commodity certification systems and the like may also present opportunities to encourage or undermine civil society participation in the processes related to natural resource exploitation.

[11] International Covenant on Civil and Political Rights, arts. 21 and 22 (2).

morals or the protection of the rights and freedoms of others. They must also be proportionate to the pursuance of legitimate aims.[12] Thus, a blanket prohibition of protests outside business premises or surrounding the operations of mining, resource and forestry companies would be unjustifiable under the International Covenant on Civil and Political Rights. Similarly, broad definitions of "vital installations" or "national interests" that encompass business premises engaged in natural resource exploitation, with a view to shielding them from peaceful assemblies, would not meet international human rights law standards.

23. There are no international law instruments in which binding legal obligations for corporations are provided for. However, it is understood that human rights, being universal, indivisible and interdependent, are to be respected by all. The Special Rapporteur takes note of Human Rights Council resolution 26/9 on the elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, which stresses the primary responsibility of States to protect against human rights abuses by third parties within their territories. The Special Rapporteur considers that an instrument negotiated to create binding obligations for corporations is desirable and should set forth norms for all business entities, national and transnational.

24. A notable shortcoming of the voluntary obligations for corporations is that they do not go far enough in ensuring that both States and businesses are held accountable for any failures to comply with them, nor do they encourage robust oversight by Governments of actions by businesses that may violate human rights. Several documents set out voluntary human rights obligations for companies in relation to human rights in general and the rights to freedom of peaceful assembly and of association in particular. These include:

(a) The United Nations Global Compact, a broad initiative on corporate responsibility covering the areas of human rights, labour, environment and the prevention of corruption. Two of the Compact's 10 principles emphasize the role of business in supporting and respecting the protection of internationally recognized human rights, and to ensure they are not complicit in human rights abuses. A third principle requires businesses to uphold the freedom of association and recognize the right to collective bargaining;

(b) The Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in 2011, which set out three pillars to the relationship between business and human rights. Firstly, States have the obligation to respect, protect and fulfil human rights and they should do this by taking measures that ensure businesses respect human rights, including by promoting and enforcing enabling laws and policies. Secondly, business enterprises have the obligation to respect internationally recognized human rights. Thirdly, States are required to ensure that victims of human rights violations have access to effective remedies including judicial and non-judicial remedies (Guiding Principles 25–28);

(c) The Voluntary Principles on Security and Human Rights, designed specifically for the extractive industries sector, to help companies maintain the safety and security of their operations while maintaining respect for human rights. The Voluntary Principles acknowledge the primary role of Governments for maintaining law and order and ensuring human rights. Furthermore, the Principles state that companies should use their influence (i) to ensure that individuals implicated in human rights abuses do not provide security services for companies; (ii) to limit the use of force to circumstances when it is strictly necessary and to an extent proportional to the threat; and (iii) to ensure that the

[12] See Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation on States parties to the Covenant, para. 6.

human rights of individuals are not violated, including the rights to freedom of peaceful assembly and of association;

(d) The International Code of Conduct for Private Security Service Providers, a multi-stakeholder initiative convened by the Government of Switzerland to set standards and principles for the conduct of private security service providers based on international human rights and humanitarian law.[11] The initiative establishes an external independent oversight mechanism to enhance accountability;

(e) The Organization for Economic Cooperation and Development Guidelines for Multinational Companies, non-binding principles and standards recommended by adhering States for responsible business conduct. The Guidelines are actively promoted by Governments through national contact points, which also provide mediation and conciliation platforms to resolve issues that may arise. Enterprises are encouraged to respect internationally recognized human rights norms and support the promotion of respect for the freedoms of expression, assembly and association online. The recommendations largely mirror those contained in the Guiding Principles on Business and Human Rights discussed above.

25. Many States consider that their obligations in relation to human rights apply only within their borders. In recent years, efforts have been made to highlight States' extraterritorial obligations, which are inherent in international human rights law. The Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights were compiled by international experts as a restatement of international law clarifying States' extraterritorial obligations. Although conceived in relation to economic, social and cultural rights, the principles are also applicable to civil and political rights. Of interest to the Special Rapporteur is the obligation for States to adopt and enforce measures to realize rights not only where the threat or harm occurs within their territory, but also "where the corporation or its parent or controlling company, has its center of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned" (principle 25 (c)). Broadening the concept of responsibility to include more than one State not only strengthens underlying rights, it also increases the chances of victims obtaining redress when violations occur.

26. Initiatives such as the Extractive Industries Transparency Initiative and the Open Government Partnership enshrine the role of citizens in policymaking processes, including those related to natural resource governance.

27. The objective of the Extractive Industries Transparency Initiative is to promote openness and accountability in the management of natural resource exploitation through a global standard.[12] Implementation and monitoring of the standard is overseen by an international board and national multi-stakeholder groups, consisting of representatives from Governments, companies and civil society representatives. The underlying rationale is that the management of natural resources in any country is a shared interest and can only be effective when all stakeholders have access to relevant information and are able to act on this information to promote sustainable economic and social development. To achieve the objectives of the Initiative, implementing countries are required, among other things, to

[11] Also of interest is the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict, which resulted from an initiative by the Swiss Government and the International Committee of the Red Cross to reiterate international humanitarian and human rights law principles that govern the activities of private military and security companies in the context of armed conflict (see A/63/467-S/2008/636, annex).

[12] Available from https://eiti.org/files/English_EITI_STANDARD.pdf.

ensure that an enabling environment exists for civil society to engage in the process and express views related to natural resource governance, including in relation to laws, regulations and administrative rules and practice. In its civil society protocol, the Initiative outlines that the rights of civil society to expression, operation, association, engagement and access to public decision-making in the implementing countries must be respected.

28. Similarly, the Open Government Partnership provides a platform for civil society to engage in a lasting dialogue with Governments to ensure that the latter are more open, accountable and responsive to their citizens. Participating States subscribe and commit to the values and principles in the Open Government Declaration, including supporting civic participation. These values include protecting the ability of not-for-profit and civil society organizations to operate in ways consistent with a commitment to freedom of expression, association, and opinion. The policy document entitled "Policy upholding the values and principles of the Open Government Partnership, as articulated in the Open Government Declaration", which was agreed upon by the Partnership's Steering Committee on 25 September 2014, provides a means of reacting to developments in participating countries that fall short of State commitments.

29. The Special Rapporteur considers the Extractive Industries Transparency Initiative and the Open Government Partnership important for enhancing the public's access to information and for reforming government policies that lead to exclusion, inequality and the marginalization of those who should benefit from natural resource exploitation. These initiatives can reinforce and open more space for civil society to engage with other stakeholders in decision-making on natural resource exploitation, but only if there is an enabling environment for civil society as a whole. General restrictions on civil society negatively affect their participation within these initiatives, and it is unacceptable to create space only for civil society working on natural resource issues. Effective participation by civil society in these initiatives and the ability of a broader portion of civil society to freely associate and peacefully assemble are both necessary.

D. Challenges applicable to both the rights to freedom of peaceful assembly and of association

30. Natural resources present something of a dilemma for even the most conscientious of States. They are a source of economic wealth, yet this wealth also brings the potential for conflict and fierce competition. If natural resources belong to the State itself, and the State is composed of the people, how exactly should resources be shared? What if communities living on the land to be exploited hold other values superior to the value of the economic potential of their land? And who makes the final decision? Ensuring that all voices are heard, including through the free exercise of peaceful assembly and association rights, promotes equitable sharing of benefits.

31. The Special Rapporteur has found that States are typically eager to shape their legal and practical environments in ways that encourage investors to exploit natural resources. Global competition for investment is fierce, and businesses, by their nature, tend to favour environments with less regulation so that they can maximize profits. There is thus something of a "race to the bottom" among States in terms of creating an enabling environment for business. For example, the Environmental Law No. 30230 of Peru reduces the ability of authorities to create natural reserves exempt from exploitation and reduces the time within which environmental impact assessments should be produced.[15]

[15] From the response to questionnaire

32. This race to the bottom may benefit the business sector, but it is often to the detriment of individuals and communities living on land slated for natural resource exploitation. For businesses, time is money, and consultation with communities is rarely seen as "efficient". At best, States may discourage drawn-out consultation processes that genuinely take into account the concerns of affected communities. At worst, States may resort to harassment and persecution of members of these communities, as well as members of associations investigating alleged violations or people having organized or participated in protests, as noted by the Working Group on Business and Human Rights (see A/HRC/23/32, para. 13).

33. The Special Rapporteur is concerned that, of the numerous cases of violations of the rights to freedom of peaceful assembly and of association reported, comparatively few have been fully investigated, with the perpetrators brought to account. By contrast, the number of arrests and prosecutions for alleged offences committed in the course of the legitimate exercise of the rights to freedom of peaceful assembly and of association continues to rise.

34. Legal mechanisms, such as injunctions, civil damages and trespass and defamation suits, are often used to curtail the work of civil society organizations and individuals engaged in defending rights in the context of natural resource exploitation. The increasing use of so-called "strategic litigation against public participation" suits is of concern because of the chilling effect the proceedings may have on the legitimate expression of dissent or opposition, including through peaceful protest. These suits may be brought by corporations against individuals or associations that are critical of natural resource exploitation activities in order to intimidate them or deter them from their work by burdening them with litigation costs and damages they may be unable to pay. The Special Rapporteur emphasizes that an independent judiciary should play a positive role in recognizing and upholding international human rights standards , especially in contexts where human rights defenders and communities are subjected to legal proceedings for exercising their rights to freedom of peaceful assembly and association.

35. The Special Rapporteur has in previous reports highlighted the significant role that effective remedies play in promoting accountability for human rights violations, stating that States have an obligation to establish accessible and effective complaints mechanisms that are able to independently, promptly and thoroughly investigate allegations of human rights violations or abuses in order to hold those responsible accountable (see A/HRC/20/27, paras. 77–81). The lack of adequate compensation for violations related to natural resource exploitation may contribute to increased social tensions, with communities feeling at a loss for obtaining redress by alternative means. In the context of natural resource exploitation, the Special Rapporteur believes that this obligation to provide remedies lies not only with host States but also with States of origin.

36. The obligations of States to ensure the respect of human rights by corporations engaged in natural resource exploitation in their own territory is clear. Less well-developed and understood are the extraterritorial obligations of States arising from the international human rights standards to which they have voluntarily acceded. At a minimum, States of origin should ensure that victims of human rights violations have effective judicial remedies. Doing so also entails a monitoring responsibility to ensure that companies operating abroad adhere to international human rights standards. States from the global North and Brazil, China, India, the Russian Federation and South Africa, where many of the companies engaged in natural resource exploitation around the world are domiciled, have an especially important role to play in this regard. For example, civil society groups in Latin America have in public hearings at the Inter-American Commission on Human Rights highlighted the significant role of Canadian companies in human rights violations in the region, and the support provided by the Government of Canada, despite these allegations.

37. The Special Rapporteur strongly urges all Governments to weigh carefully their involvement in natural resource exploitation activities that have the potential to violate human rights. Introspection is especially needed in view of the State practice of merging foreign affairs, trade and international development portfolios and thus encouraging the alignment of sometimes disparate objectives.

38. As a starting point, he commends the decisions of various State institutions, such as the government pension funds of Norway and Sweden, to divest themselves of interests in corporations deemed to engage in acts of environmental degradation or violations of human rights and labour standards.[16] Some States have enacted laws that prohibit and punish the bribery of foreign public officials and sanction companies that do not prevent bribery.[17] The Special Rapporteur notes that these laws are a step in the right direction but more still needs to be done. He encourages similar initiatives in respect of violations of human rights abroad.

E. Challenges to the right to freedom of peaceful assembly

39. International human rights law affirms the right of individuals to express their opinions, even if these opinions are unpopular or in opposition to government views or policies.[18] The right to freedom of peaceful assembly is an essential vehicle for people to express their opinions, and this right cannot be limited based solely upon an assembly's message or content. Despite this, the Special Rapporteur has found that content often plays a decisive role in whether peaceful assemblies are facilitated or suppressed. Assemblies that support the Government's position are rarely, if ever, obstructed, while those that oppose the Government's position are at much greater risk for suppression. This is true generally, but particularly in the context of natural resource exploitation.

40. The Special Rapporteur holds the view that as long as such an assembly is peaceful, States have the obligation to facilitate the gathering whether or not authorities agree with the content of the message. Any interference with such peaceful assemblies, including dispersal, should meet the strict tests of necessity and proportionality stipulated in international human rights standards.

41. The Special Rapporteur reiterates that the guarantees provided by international human rights standards relate only to assemblies that are peaceful (see A/HRC/20/27, para. 25). When violent incidents occur within otherwise peaceful assemblies, authorities have a duty to distinguish between peaceful and non-peaceful demonstrators, take measures to de-escalate tensions and hold the violent individuals — not the organizers — to account for their actions. The potential for violence is not an excuse to interfere with or disperse otherwise peaceful assemblies. This principle is all the more important because violence in the course of peaceful protests may be instigated to justify the dispersal of a protest.

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[16] Norway, Ministry of Finance, "The Management of the Government Pension Fund in 2013" (available from www.regjeringen.no/contentassets/5434cb3d2ff04441a21a2c9b1d55ca06/en-gb-pdfs/stm201320140019000engpdfs.pdf), p. 108; Second Swedish National Pension Fund, "Swedish AP Funds exclude four companies accused of contravening international conventions", 30 September 2013 (available from www.ap2.se/en/Financial-information/Press-releases/2013/swedish-ap-funds-exclude-four-companies-accused-of-contravening-international-conventions-/).

[17] The United Kingdom Bribery Act 2010 and the United States Foreign Corrupt Practices Act of 1977. In the United States of America, under the 2010 Dodd–Frank Wall Street Reform and Consumer Protection Act, section 1502, the enhancement of transparency over conflict minerals from the Democratic Republic of Congo is sought.

[18] See International Covenant on Civil and Political Rights, art. 19.

42. In countries experiencing social conflict over natural resource exploitation, individuals who exercise their right to freedom of peaceful assembly are frequently framed as "inciting" communities to resist and disrupt "development projects". Peaceful assembly and association rights are not seen as a legitimate vehicle to express concerns, but as deliberate attempts to undermine the State's efforts to promote economic growth and development. Those who oppose natural resource exploitation activities are labelled as "anti-development" or "enemies of the State". Attacks are also used as an intimidation tactic to force communities to accept exploitation projects.

43. It is particularly reprehensible when the vilification and stigmatization comes from the highest government authorities, as this sends a clear message to other officials that it is acceptable to perpetuate the intimidation and harassment of activists and defenders. Negative images of activists and human rights defenders are exacerbated when the media picks up on the portrayals and publishes them.

44. Negative perceptions of the exercise of the right to freedom of peaceful assembly are also manifested through the increasing harassment, intimidation and criminalization of activities by environmental, land rights and other activists and groups that advocate for the effective consultation and participation of affected communities in decisions affecting them. They are charged with crimes that often carry severe sentences, such as sabotage and terrorism. In Chile, the Mapuche indigenous peoples, who have long protested over the loss of their lands and territory, were charged (though eventually acquitted) under the country's anti-terrorism law; legitimate protest had thus been equated with criminal offences (see A/HRC/21/47/Add.3, case CHL 1/2011, and A/HRC/19/44, case CHL 1/2011). In the Philippines, penalties have been imposed under the Penal Code for "grave coercion", an offence defined as using violence to prevent another person from doing something that is not unlawful or compelling the person to do something against their will.[19] The Special Rapporteur was informed that peaceful protestors who obstruct mining company employees and equipment are often charged with grave coercion. Civil society organizations in Canada have expressed concern about the definition of "activities that undermine the security of Canada" contained in the Security of Canada Information Sharing Act proposed in Bill C-51 (Anti-Terrorism Act) and the potential for the authorities to interfere with legitimate peaceful protests that they define as "undermining" security.[20] The Australian State of Tasmania in November 2014 enacted the Workplaces (Protection from Protestors) Act 2014, which makes it a criminal offence to participate in a protest that may obstruct or prevent a business activity or access to a business premises (see also A/HRC/28/85, case AUS 3/2014).

45. Violations are perpetrated in many resource-rich countries where authorities and others rely on criminalization to intimidate communities into giving up their land for industry. In Brazil, confrontations between non-indigenous farmers and indigenous groups have led to criminal prosecution of the latter for occupying lands as a form of protests (see A/HRC/12/34/Add.2, para. 49). The Special Rapporteur on the rights of indigenous peoples has reported that the Government of Argentina had responded to protests from indigenous groups opposing evictions or other projects by prosecuting those involved (see A/HRC/21/47/Add.2, paras. 51, 56 and 57). In Ecuador, the Committee on Economic, Social and Cultural Rights has expressed concern about the criminal investigations and convictions of indigenous leaders protesting against legislative proposals concerning water management and development projects (see E/C.12/ECU/CO/3, para. 10).

[19] Revised Penal Code of the Philippines, art. 286.

[20] See British Columbia Civil Liberties Association, submission to the Standing Committee on Public Safety and National Security, March 2015. Available from https://bccla.org/wp-content/uploads/2015/03/BCCLA-Submissions-on-C-51-For-website.pdf.

46. Furthermore, perceived leaders of movements or protests are often subjected to particularly egregious violations of their rights, such as disappearances and arbitrary killings in an effort by States and corporations to intimidate and thus disrupt organized efforts to resist exploitation activities. In Orissa, India, anti-mining campaigners have been killed, and 42 women defenders at the forefront of demonstrations against dams were jailed for protesting (see A/HRC/19/55/Add.1, para. 76).

47. The Special Rapporteur has received numerous reports concerning violations of the rights of human rights defenders, activists and community members who exercised their rights to freedom of peaceful assembly in the context of natural resource exploitation. Civil society activists in countries such as Colombia (A/HRC/28/85, case COL 7/2014), the Philippines (A/HRC/27/72, case PHL 2/2014) and Thailand (A/HRC/24/21, case THA 3/2013), to name a few, have paid with their lives for leading advocacy campaigns against natural resource exploitation operations. According to the Special Rapporteur on the situation of human rights defenders, human rights defenders working on extractive and the construction and development projects in the Americas were the subject of most communications to her and faced the highest risk of death as a result of their human rights activities (see A/HRC/19/55, para. 71). In South Africa, over 30 miners at the Marikana Mine were shot and killed by police during a strike, although the workers' action was not entirely peaceful (see A/HRC/22/67 and Corrs.1 and 2, ZAF cases 3/2012). In Guatemala, where agriculture provides the main livelihood for the majority of the population, competition between landowners, farmers, indigenous communities and their associations and large-scale commercial agricultural and mining projects has resulted in the criminalization of social movements and their claims (see A/HRC/26/29/Add.1, paras. 193–199, and A/HRC/10/12, para. 34–35).

48. It is worth emphasizing that peaceful protests are typically a measure of last resort, when scope for effective engagement with the authorities or businesses is otherwise limited. In some cases, communities may have gone through consultation processes only to find them, from their perspective, improperly conducted, compromised, corrupt or otherwise unsatisfactory. In other cases, agreements reached between the parties may not be not adhered to. For example in Myanmar, protests against the Monywa Copper Project were allegedly sparked in 2012 when the corporation involved in the mining operations reneged on an agreement with affected villagers to halt operations pending negotiations with them. Police later moved in to disperse the peaceful protest camps using inordinate force (see A/HRC/25/64, para. 28). A failure by a company to abide by a contract signed with the owners of community territory in La Sierrita de Galeana in Mexico also resulted in a peaceful protest that was violently dispersed, allegedly under the instructions of company officials.[21]

49. Unfortunately, despite their potential for mitigating the underlying reasons for many peaceful protests in the context of natural resource exploitation, consultation mechanisms are often overlooked or employed inadequately. International human rights law and standards mandate that free, prior and informed consent is a prerequisite for the exploitation of natural resources in areas owned by indigenous peoples. As recommended in the Guiding Principles on Business and Human Rights, due diligence, including conducted through human rights impact assessments before the start of the project, is key for ensuring that exploitation activities do not violate the rights of affected communities.

50. In this regard, the Special Rapporteur welcomes the launch by Colombia of new public policy guidelines on human rights and business in July 2014.[22] The guidelines are

[21] Submission by the Project of Economic, Social and Cultural Rights, November 2014, pp. 10–11.
[22] Response to the questionnaire.

being promoted as a way to guarantee that business operations are conducted in accordance with human rights. He similarly welcomes information from the Government of Costa Rica that indicates that the country's overarching legal norms regulating commercial agreements guarantee the rights to freedom of peaceful assembly and association.[73] Chile has recently assembled an interministerial commission responsible for reviewing and aligning regulations governing the General Consultation Process and the Environmental Impact Evaluation System. This action was a direct consequence of criticism levelled at existing indigenous participation mechanisms by the National Institute of Human Rights and the Human Rights Centre of Diego Portales University.[74]

51. The freedom to assemble peacefully is required in order for consultations among stakeholders to be convened. The ability to peacefully assemble is impeded in environments where insecurity and conflict prevails.. The neutrality of the consultations needs to be maintained throughout the process. For consent to be free, prior and informed, consultations should be conducted in an environment free of intimidation or fear, meaning that meetings should be free from infiltration by security organs, surveillance and attendance by uniformed or armed law enforcement agents. A level playing field should be ensured for all stakeholders to have free access to relevant information and assurances that their grievances will be heard.

52. The Special Rapporteur notes that requirements to obtain prior authorization before gatherings related to the exploitation of natural resources — such as information sessions, consultations, public hearings and the like — not only infringe on the right to freedom of peaceful assembly, they also impede the right of affected communities to access information and participate in decision-making. In Uganda, non-governmental organizations working on oil issues are reportedly required by authorities to seek permission, in particular from the Ministry of Energy and Mineral Development before they can meet with grassroots communities, although the authorities have made efforts to remedy this situation.[75]

53. Peaceful assemblies whose focus is on natural resource exploitation may also attract increased attention from law enforcement officers, with some groups alleging that they are under greater scrutiny. In Canada, for example, civil society sources claim that First Nations communities and environmental groups "have been under a special program of government surveillance, and the information was shared among security agencies, government departments and industry about groups that oppose resource development projects".[76]

54. An issue of significant concern to the Special Rapporteur is the use of private military and security companies to protect the property and facilities of corporations engaged in natural resource exploitation. These companies may be contracted by the corporations or, as in the case of Equatorial Guinea, by the Government (see A/HRC/18/32/Add.2, para. 46). Companies may also have contracts with Governments to have members of the police force seconded to them, as in Somalia (Puntland) (see A/HRC/24/45/Add.2, para. 24).

55. The Special Rapporteur is alarmed by the latitude afforded to corporations and private military and security companies in relation to policing, and often suppressing, peaceful protests. He echoes the grave concerns expressed by other special procedures

[73] Response to the questionnaire.
[74] Response to the questionnaire.
[75] Human Rights Watch, "Uganda: Growing Intimidation, Threats to Civil Society", 21 August 2012. Available from www.hrw.org/news/2012/08/21/uganda-growing-intimidation-threats-civil-society.
[76] See website of Voices-Voix: http://voices-voix.ca/.

mandate holders about these companies suppressing legitimate advocacy activity, particularly social protest, and their attacks on human rights defenders (see A/HRC/7/7/Add.4, para. 71, and A/HRC/19/55, para. 63). In his view, the potential for violations of rights, including to peaceful assembly and association rights, is particularly high when law enforcement responsibilities are ceded to private actors, who are accountable to their clients rather than to the public. Private security companies have also been known to receive concessions to exploit natural resources in exchange for their services, further blurring the interests and relationships between the actors (see A/61/341, para. 74).

56. The Special Rapporteur reiterates that the primary responsibility for ensuring public security, law and order for the benefit of all within a State's boundaries lies with the Government of that State. The State should also regulate, control and monitor the activities of private security firms, including those contracted in the natural resource exploitation sector, and hold them accountable when they breach the rights to freedom of peaceful assembly and of association.

F. Challenges to the right to freedom of association

57. Associations involved in environmental protection, or community mobilization against natural resource exploitation activities, or generally any activities that are perceived as a threat to natural resource exploitation operations, face heightened risks of restrictions of their rights. Associations are a vehicle for people to join their voices together on an issue of common concern, thus amplifying their grievances. Associations also gather together or facilitate access to resources, such as funding, skills, knowledge and solidarity. This aggregation brings increased power and, when this power is deployed to oppose natural resource exploitation activities, it can be threatening to those with financial stakes in the projects. It is thus not surprising that States and corporations may use a variety of measures to interfere with the right to freedom of association.

58. Restrictive laws, for example, are used to target organizations working on issues that the authorities find sensitive. Emblematic of this approach is the use by Ecuador of Executive Decree No. 16 to close the Pachamama Foundation, which had worked peacefully and legitimately for 18 years to defend human rights, especially the rights of indigenous peoples in the Amazon (A/HRC/26/21 and I.C.J. 4/2013).

59. The Special Rapporteur has on many occasions emphasized that the right to freedom of association applies to informal associations and does not require that a group be registered. If a registration regime is to be established, he favours a "notification" regime for the establishment of associations rather than "authorization". A notification system has a particular resonance in the context of natural resource exploitation, where lobbying and advocacy is often done through social movements that may not have a formal organizational structure. Authorities and companies may be less inclined to engage with these movements because of their informal nature and may in fact accuse them of being illegal for being unregistered.

60. The ability of associations to participate in consultation procedures, such as environmental and social impact assessments, should not be predicated on onerous conditions, including registration requirements, membership or activities stipulated in their charter or statutes. The Special Rapporteur notes efforts made by Austria and Romania to ensure community engagement during impact assessment processes and Armenia to ensure

access to environmental information by the public."[27] He emphasizes that concerned community groups should not be subjected to unreasonable requirements, such as minimum membership numbers, in order for their concerns to be heard and taken on board. A reasonable demonstration of interest in the impact of the exploitation activities should be sufficient for associations and groups to present their views in consultation procedures.

61. Similarly, a group's formal registration or recognition by authorities should not be required in order for associations to challenge decision-making processes related to environmental issues or natural resource exploitation. Recognition should not confer advantages that would not be available to unregistered or unrecognized groups. In particular, recognition or non-recognition should not be used as a basis for authorizing or restricting scrutiny by associations of the natural resource exploitation industry. Associations should be free to engage in monitoring activities and to have access to information without undue interference by authorities, and be empowered with the ability to influence decision making processes.

62. Governments also place restrictions on access to foreign funding to curtail the activities of associations engaged in environmental protection work, which often focuses on natural resource exploitation activities. In India, for example, the Government in 2014 blocked funding from foreign sources to Greenpeace India, although the High Court ultimately ordered the release of funds.[28] In some States where the environment for fundraising by civil society organizations is generally restrictive, there have been efforts to limit restrictions on access to funding for groups working specifically on natural resource exploitation. The Extractive Industries Transparency Initiative has called on the Government of Azerbaijan, for example, to ensure that civil society representatives involved in the Initiative are able to access their bank accounts and can register new grants.[29]

63. Some States may also target members of civil society based on their foreign citizenship. In 2015, the Government of Cambodia, for example, refused to renew the residence permit of a Spanish environmental activist who was working with the local organization Mother Nature to halt a controversial hydroelectric project in the Areng valley.[30] The activist was later deported. The Special Rapporteur emphasizes that nationality is not a proper basis for limiting the rights to freedom of peaceful assembly and of association (see A/HRC/26/29, para. 25).

64. Individual human rights defenders and associations may also be subject to attacks, stigmatization, intimidation, surveillance, travel bans, and risk the suspension of their activities or even dissolution of the organization when they speak out against natural resource exploitation. The organization Publish What You Pay Uganda reported, for example, that they had had their equipment confiscated for nearly two months after trying to screen a documentary on lessons that could be learned from other resource-rich countries.[31]

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[27] Responses to questionnaire.

[28] Greenpeace, "Massive win for voices of dissent & democracy", 12 March 2015. Available from www.greenpeace.org/india/en/news/Feature-Stories/Massive-win-for-voices-of-dissent-democracy/.

[29] Minutes of 28th EITI Board Meeting, annex A, p. 25. Available from https://eiti.org/files/BP/Minutes-from-the-28th-EITI-Board-meeting-Myanmar_Final.pdf.

[30] Cambodian League for the Promotion and Defence of Human Rights (Licadho), "Civil Society Groups Condemn Use of Visa Denial to Curb Activism". Available from www.licadho-cambodia.org/pressrelease.php?perm=373.

[31] East and Horn of Africa Human Rights Defenders Project, "Only the brave talk about oil: Human rights defenders and the resource extraction industries in Uganda and Tanzania", November 2014.

65. As previously mentioned, the "race to the bottom" may result in weakened labour standards, in violation of the right to freedom of association for workers in the natural resource exploitation industry. In several countries, Governments have amended labour laws, weakening labour standards and making it harder for workers to unionize, collectively bargain and strike. In Kazakhstan, a recently enacted law on trade unions mandates compulsory affiliation of all trade unions to a federative body, denying trade unions the option to choose whether to be so affiliated or not (see A/HRC/29/25/Add.2).

66. The Special Rapporteur agrees with ILO that it constitutes a violation of the right to freedom of association when authorities and employers actively interfere with the operations of unions. Such interference includes refusing to recognize elected trade union officials, tampering with elections, forming their own competing unions and denying union members access to premises to conduct meetings. The ability of unions to hold meetings on their premises without prior authorization or interference and to choose their own representatives are essential elements of the right to freedom of association.[32] Certain employment practices are also a concern, particularly where they reduce workers' ability to organize or collectively bargain. The use of short-term contracts and precarious terms of employment for workers in extractive industries, for example, denies workers job security and the confidence to advocate for unionization and other rights.

IV. Conclusions and recommendations

67. **An environment that allows for the robust exercise of the rights to freedom of peaceful assembly and of association is essential in ensuring that natural resource exploitation is fair, transparent and accountable and benefits citizens. These rights encourage access to information, public participation and free, prior and informed consent and also highlight the gaps in the enjoyment of other rights related to land tenure, the environment and self-determination. The Special Rapporteur believes that the more consultation on any particular exploitation issue, the better. He also wishes to highlight that the benefits of such consultation — and the improved planning that results from extensive consultation — can be immense for society at large. One example is the Government Pension Fund Global of Norway, which was set up in 1990 to hold surplus wealth produced by Norwegian petroleum income.[33] It is now the largest sovereign wealth fund in the world.[34]**

68. **States bear the primary responsibility for promoting and protecting peaceful assembly and association rights. They must implement and strengthen mechanisms that enable them discharge this duty. One major problem with States' current legal frameworks, however, is a lack of proper enforcement mechanisms at both the domestic and international levels. Without such mechanisms, accountability will be, at best, sporadic and irregular.**

p. 12. Available from www.defenddefenders.org/wp-content/uploads/2013/01/only_the_brave_WEB.pdf.

[32] International Labour Organization, digest on freedom of association, paras. 130–132 and 432–438. Available from www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_090632.pdf.

[33] For more information about the Fund, see www.nbim.no/en/the-fund/about-the-fund/.

[34] Penn Wharton Public Policy Initiative, "Statens Pensionsfund Utland: a cornerstone of Norway's energy policy", 20 March 2015. Available from http://publicpolicy.wharton.upenn.edu/live/news/632-statens-pensionsfund-utland-a-cornerstone-of.

69. A significant gap in ensuring that assembly and association rights are guaranteed in the context of natural resource extraction is created by the lack of binding norms for corporations, which are key actors in natural resource exploitation. A growing number of large businesses wield far more power, resources and influence than many States. A shrinking number of corporations dominate vast sectors of the global economy. Despite this, the primary responsibility for ensuring the exercise of human rights remains with States. This situation must evolve to meet the reality of today's world. Domestic and international law should impose binding obligations upon corporations to guarantee that their activities, including resource exploitation, comply with internationally accepted human rights standards.

70. The significance of civil society as a stakeholder in the context of natural resource exploitation is underestimated, misperceived and often denied by both States and businesses. This is symptomatic of a growing disregard for a plurality of views, particularly those which champion non-economic values over economic ones. Such disregard is counterproductive and divisive, and is likely contributing to an erosion of confidence in the world's prevailing economic system. It is thus in the interest of both States and corporations to recognize actions by civil society groups both in support of and against the entire decision-making chain in natural resource governance, as a legitimate exercise by these individuals and groups of their rights to freedom of peaceful assembly and of association.

71. In that regard, the Special Rapporteur reiterates recommendations made in previous reports to the extent applicable in this context, and makes the following recommendations.

A. States

72. The Special Rapporteur recommends that States:

(a) Ensure that they meet their obligations to respect, protect and fulfil human rights in accordance with international human rights law, including by encouraging the implementation of the Guiding Principles on Business and Human Rights; recognize the relevance of realizing the rights to freedom of peaceful assembly and of association in the context of natural resource exploitation in their laws, policies and practice; strengthen the legal framework that guides these exploitation activities, including by guaranteeing substantive rights to land tenure, labour and environment with special attention to marginalized groups;

(b) Create an enabling environment in which civil society can access relevant information, participate in decision-making and express opinions freely, including through peaceful assemblies, without threats of prosecution or other harm for legitimate opposition; ensure that cases of violations of human rights, including peaceful assembly and association rights, are promptly and impartially investigated and those responsible for the violations are held to account;

(c) Take appropriate measures to meet extraterritorial obligations, particularly by providing access to remedy for victims of violations of the rights to freedom of peaceful assembly and of association; measures should include but are not limited to:

(i) Strengthening the independence and capacity of judicial authorities to ensure that cases relating to violations of the rights to freedom of peaceful assembly and of association are adjudicated in accordance with international human rights law;

(ii) **Enacting, implementing and enforcing laws that prohibit and provide penalties for conduct by corporations that violates human rights abroad;**

(iii) **Ensuring that trade and other agreements on investment in natural resource exploitation activities, whether concluded bilaterally or multilaterally, recognize and protect the exercise of peaceful assembly and association rights for affected individuals and groups;**

(iv) **Consider the elaboration of an international legally binding instrument on human rights standards for businesses, as proposed by the Human Rights Council in its resolution 26/9, and ensure that these standards apply to businesses working domestically as well as internationally;**

(d) **Develop, in consultation with the private sector and civil society, binding laws and standards which ensure that private actors abide by international and domestic human rights norms, including in the context of natural resource exploitation;**

(e) **Subscribe to and increase the quality of implementation of existing multi-stakeholder initiatives, such as the Extractive Industries Transparency Initiative and the Open Government Partnership, which encourage civil society participation in the governance of natural resources; participating States should strengthen the role of the rights to freedom of peaceful assembly and of association in these initiatives;**

(f) **Ensure the provision of adequate security and public order management in accordance with international human rights law to preclude the need for private military and security companies to fill this gap.**

B. Corporations

73. **The Special Rapporteur recommends that corporations:**

(a) **Meet their obligations to respect internationally accepted human rights in their natural resource exploitation activities, including the rights to freedom of peaceful assembly and of association;**

(b) **Adhere to the principle to "do no harm", by avoiding causing or contributing to violations of peaceful assembly and association rights and preventing and mitigating violations linked to business relationships; corporations should also insist that States uphold peaceful assembly and association rights;**

(c) **Implement the Guiding Principles on Business and Human Rights by, among other things, making policy commitments to respect peaceful assembly and association rights and conducting due diligence in relation to human rights, including through human rights impact assessments;**

(d) **Subscribe to and increase the quality of participation in and implementation of existing multi-stakeholder initiatives, such as the Extractive Industries Transparency Initiative and the Open Government Partnership; participating corporations should strengthen their role in respecting the rights to freedom of peaceful assembly and of association in the framework of these initiatives;**

(e) **Provide avenues for compensation and other redress in the event of human rights violations related to natural resource exploitation activities;**

(f) **Ensure that international law standards relating to public participation and free, prior and informed consent are scrupulously adhered to in negotiations with groups affected by natural resource exploitation activities.**

C. Civil society

74. **The Special Rapporteur recommends that civil society:**

(a) **Strengthen knowledge of local, national, regional and international legislative framework regulating the protection of human rights;**

(b) **Strengthen research, monitoring and documentation capacity of violations of peaceful assembly and association rights in the context of natural resource exploitation;**

(c) **Increase and enhance engagement and participation in multi-stakeholder initiatives, through which civil society has the opportunity to engage in decision-making on natural resource governance;**

(d) **Continue to advocate for binding norms to ensure compliance by corporations to internationally agreed human rights standards.;**

(e) **Strengthen solidarity among civil society in host States and States of origin to raise awareness of violations and coordinate advocacy for accountability.**

D. Other actors

75. **The Special Rapporteur recommends that financial institutions (international and national) ensure that their investment choices do not encourage or support the violation of peaceful assembly and association rights.**

76. **He recommends that national human rights institutions consider increased investigation, research, monitoring and documentation of violations of peaceful assembly and association rights and providing avenues for redress where feasible.**

77. **He recommends that consumers and corporate shareholders consider the human rights record of companies when purchasing products or company shares, and ensure that those purchases do not encourage or support the violation of peaceful assembly and association rights. The Special Rapporteur also encourages shareholders and consumers to join with others in publicizing the human rights rationale behind their purchase and investment choices.**

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai

Addendum

Mission to Oman*

Summary

The Special Rapporteur on the rights to freedom of peaceful assembly and of association conducted an official visit to Oman from 8 to 13 September 2014 to assess the situation of the rights to freedom of peaceful assembly and of association in the country, pursuant to Human Rights Council resolutions 15/21 and 24/5.

Following two introductory sections, in sections III and IV the Special Rapporteur refers to a number of challenges in law and in practice in relation to the exercise of the rights under his mandate.

In sections V and VI, he focuses on the role of the National Human Rights Commission and the assistance activities of the Regional Office for the Middle East and North Africa of the Office of the United Nations High Commissioner for Human Rights.

Finally, in section VII, the Special Rapporteur formulates conclusions and recommendations.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission and Arabic only.

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Annex

[Arabic and English only]

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on his mission to Oman (8–13 September 2014)

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I. Introduction

1. The Special Rapporteur on the rights to freedom of peaceful assembly and of association conducted an official visit to Oman from 8 to 13 September 2014. The purpose of the visit was to assess the exercise, promotion and protection of the rights under his mandate.

2. The Special Rapporteur views the invitation that was extended to him by Oman as testimony of the State's willingness to engage in a frank, constructive and open dialogue on the situation of human rights. He therefore presents his findings and offers his recommendations in a spirit of shared endeavour and commitment, supporting the efforts of Oman towards the realization of the rights to freedom of peaceful assembly and of association.

3. He thanks the Government for its cooperation before and during the conduct of the mission and commends Oman for being the first Arab country to agree on an official country visit. He had constructive talks with members of the executive, legislative and judicial branches. He met with the Attorney General, the Minister for Social Development, the Secretary-General of the Ministry of Foreign Affairs, the Assistant Inspector General of the Royal Oman Police, the Secretary-General of the State Council, the Chairman of the Consultative Council and the Chairman of the Public Administration of Judgement Enforcement. In addition to holding meetings in Muscat, the Special Rapporteur travelled to Salalah, in the south of the country, where he met with the Adviser at the Office of the Minister of State and Governor of Dhofar. The Special Rapporteur also had the opportunity to consult with representatives of the National Human Rights Commission and with human rights activists, both men and women, including lawyers, bloggers and researchers. He is most grateful to all his interlocutors.

4. The Special Rapporteur regrets, however, that the Ministry of Foreign Affairs did not accommodate his request to meet with Talib al-Mamari, a member of the lower chamber of the parliament, who was convicted of convening an illegal gathering and is currently serving a prison sentence at Sumail Central Prison. He also regrets that, although he would have liked to meet with representatives from the Ministry of the Interior, he was not accorded this opportunity. The Special Rapporteur would like to emphasize the importance of guaranteeing freedom of inquiry to mandate holders so that they can have free access to prisons and representatives of central and local authorities of all branches of Government, as provided for in the terms of reference for country visits (E/CN.4/1998/45). Free access enables the Special Rapporteur to objectively assess the state of the rights under his mandate.

5. In carrying out his visit, the Special Rapporteur was guided by several international legal standards, including the International Covenant on Civil and Political Rights, in particular its articles 21 and 22; the International Covenant on Economic, Social and Cultural Rights; the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms; and relevant Human Rights Council resolutions.

II. Political, economic, social and legal context

6. Oman is a hereditary monarchy headed by the Sultan, who is Head of State and Supreme Commander of the Armed Forces.

7. Among his other duties, the Sultan presides over the Council of Ministers, which implements State policy. The Sultan appoints and dismisses ministers and other officials of

equivalent status and authorizes and approves laws, decrees and accession to international treaties (see HRI/CORE/OMN/2013, paras. 18–20).

8. A series of political reforms have gradually increased the representation in government of elected officials, albeit in an advisory capacity. The legislative branch comprises the Council of State (Majlis al-Dawla), with 83 members, including 15 women, selected by the Sultan, and the Consultative Council (Majlis al-Shura). The Consultative Council works as an advisory body to the Sultan, with limited powers to propose legislation; it is composed of 84 members, including 1 woman, elected by universal suffrage (ibid., paras. 21–26).

9. The Sultan chairs the Supreme Council of the Judiciary, an organ with supervisory powers over the judicial system. Furthermore, the Sultan directly appoints and dismisses senior judges and presides over the Council of Ministers, which is tasked with overseeing compliance with court judgements. Though nominally independent (ibid., para. 27), the judiciary remains strongly influenced by the executive.

10. Since the 1970s, Oman has made remarkable progress in developing its economy, building infrastructure, widening access to education and improving health and basic services, such as water, housing and electricity. The country has tried to diversify its petroleum-dependent economy, promoting sectors based on renewable natural resources such as agriculture and fishing, encouraging tourism and producing light industrial goods. Oman has expanded its diplomatic relations, resolved its border disputes and assured a high degree of internal stability in a region often subject to turbulence, tensions and conflicts. The Special Rapporteur acknowledges the significant achievements made by Oman and commends the people and the Government for the considerable progress they have made.

11. The Special Rapporteur also notes that Oman is blessed with a diversity of ethnicities, cultures and nationalities and has remained largely cohesive and stable.

12. The Special Rapporteur notes the efforts made by Oman to consolidate the legal framework for the protection and promotion of human rights. The Basic Law of Oman sets out civil and political liberties for all, including the rights of expression and association, the rights to private property and personal privacy and the right to freedom of religion or belief. The rights of peaceful assembly and non-discrimination are, however, guaranteed only to Omani citizens,[1] contrary to best practices. In addition, a number of laws and decrees limit the rights to freedom of peaceful assembly and of association.

13. Oman is a party to international treaties relevant to peaceful assembly and association rights, including the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. In addition, Oman has acceded to the International Convention on the Elimination of All Forms of Racial Discrimination and to the Convention on the Rights of Persons with Disabilities. From 1998 to 2001, it ratified four relevant conventions of the International Labour Organization (ILO).[2]

[1] Basic Law of the Sultanate of Oman promulgated by Royal Decree No. 101/96, arts. 32 and 17, respectively.

[2] Oman ratified Conventions No. 29 (1930) concerning Forced or Compulsory Labour in 1998; No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour in 2001; No. 138 (1973) concerning Minimum Age for Admission to Employment in 2005; and No. 105 (1957) concerning the Abolition of Forced Labour in 2005.

14. The Basic Law of Oman provides that international law has primacy over national laws,[1] but the country has made reservations to articles 9, 15, 16 and 29 of the Convention on the Elimination of All Forms of Discrimination against Women and to articles 7, 9, 14, 21 and 30 of the Convention on the Rights of the Child. The Special Rapporteur is pleased that Oman has recently lifted four of its reservations to the latter treaty and limited the scope of another reservation (see A/HRC/17/7, para. 12). Oman undertook to examine recommendations to remove its reservations to the Convention on the Elimination of All Forms of Discrimination against Women (ibid., para. 90.16).

15. The Special Rapporteur regrets that Oman has neither acceded to the core universal human rights instruments, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, nor ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The Special Rapporteur notes that, during its review in the framework of the universal periodic review mechanism in January 2011, Oman agreed to consider accession to the basic international instruments and postponed for further consideration the recommendations to sign and accede to the Covenants and their optional protocols (ibid., paras. 87 and 89.2). The Special Rapporteur was informed by multiple government officials that the Government was currently considering ratifying those instruments. He urges the Government to ratify the instruments at its earliest opportunity. While he agrees that States should take seriously any commitments they make and should therefore be prepared to implement the relevant obligations, that should not be used as an excuse to indefinitely delay ratification. The Special Rapporteur is convinced that the great strides that Oman has made in transforming and modernizing its society in the past 40 years signal the abundant capacity of the State to successfully implement the core international human rights treaties.

16. The Special Rapporteur notes with appreciation that Oman has accepted a recommendation to examine the possibility of extending an open invitation to all special procedures mandate holders in line with its belief in an open and constructive engagement with the United Nations human rights mechanisms (see A/HRC/17/2, para. 367) and that it welcomes visits conducted by all special procedures in compliance with the established procedures therefore (see A/HRC/17/7/Add.1, para. 90.27).

III. Challenges to the exercise of the right to freedom of peaceful assembly

A. Legal framework

17. Article 32 of the Basic Law of Oman provides that "citizens have the right to assemble within the limits of the Law", but there are no laws that clearly and explicitly establish the presumption in favour of holding peaceful assemblies or, generally speaking, which promote the right to peaceful assembly. Rather, most laws impose limits.

[1] Article (72) states that "The application of this Basic Statute shall not prejudice treaties and agreements the Sultanate has entered into with other countries, international bodies and organisations". Article (80) states that "No authority in the State may issue regulations, statutes, decisions or directives that contradict the provisions of laws and decrees in force, or international treaties and agreements which constitute part of the Law of the Land".

18. For example, articles 137 and 138 of the Penal Code criminalize seditious assembly, which is defined as "a private gathering including at least 10 individuals with a view to committing a riot or a breach of public order". The punishment for not dispersing an assembly following an order by the authorities is between 10 days and one year in prison and a fine not exceeding 50 rials. Furthermore, the law places limits on assembly rights that are vague and susceptible to misuse by the authorities. For example, "anyone who commits an act … expressing hatred and contempt" faces between three months and three years in prison and a fine of up to 500 rials. Article 130 bis of the Criminal Code provides for punishment of "anyone who promotes religious or sectarian dissension, or stirs up feelings of hatred among the country's population" by imprisonment for a period not exceeding 10 years.[4] Terms such as "hatred", "contempt" and "dissension" are ambiguous and are not defined in the law.

19. The Special Rapporteur finds that the country's legal framework is not conducive to the free and unhindered exercise of the right to freedom of peaceful assembly. He is particularly concerned that:

(a) The right to freedom of peaceful assembly is not recognized for everyone. In a country where a significant percentage of the population consists of migrant workers, restricting their rights to peacefully gather to express their concerns amounts to denying them an outlet to air their grievances. It places them at a higher risk of violations and abuses that may go unreported, uninvestigated and unpunished. The Special Rapporteur emphasizes that groups that are disenfranchised from mainstream political activities, such as voting and holding office, have an even greater need for alternative means to participate in the public sphere. Peaceful assemblies are an important tool for allowing the voices of otherwise excluded groups to be heard (see A/HRC/26/29, para. 25);

(b) The legal framework lends itself to the criminalization of the exercise of fundamental freedoms, including the right to freedom of peaceful assembly, and opens the door to judicial harassment, persecution and intimidation of individuals peacefully exercising that right. Under the Penal Code, the actions of libelling or expressing public criticism of the Sultan,[5] committing an affront to an official in service "publicly by publication and by speech or gestures"[6] and blaspheming or "pronounc[ing] a curse at his Prophets"[7] are all punishable by a maximum sentence of three years and/or a fine of up to 500 rials. Article 312 of the Code also makes the actions of disturbing "public tranquillity by screaming or making noise, with no reason, or by using any noisy device … in public or private places"[8] and obstructing public roads[9] punishable by prison sentences and/or fines;

(c) Some provisions in the laws are so broadly worded as to allow virtually unlimited interpretations of what could be an offence. That places excessive discretion in the hands of implementing authorities and creates uncertainty about what the law means for those exercising their rights. Some of the prohibitions impair the very essence of the rights to freedom of peaceful assembly, opinion and expression. For example, article 34 of the Penal Code defines public crimes as:

> The ones perpetrated by the following means: (1) Acts and gestures committed in a public place, or a place open to the public or exposed to sight, or those seen, due to the offender's fault, by an individual not intervening in the act or gesture; (2) Speech

[4] Royal Decree No. 72/2001, Assault Against the State's Internal Security.
[5] Royal Decree 7/74 establishing the Omani Penal Code, 16 February 1974, art. 126.
[6] Ibid., art. 173.
[7] Ibid., art. 209 (1).
[8] Ibid., art. 312 (4).
[9] Ibid., art. 312 (11).

and screams either made directly by the offender or through devices, so as they are heard by an individual not intervening in such speech or screams; (3) Various writings, drawings, pictures, photographies, films, emblems, if shown in a public place or a place open to the public". Article 223 prohibits homosexuality and states that "the suspects of homosexual or lesbian intercourse shall be prosecuted without a prior complaint, if the act results in a public scandal."

Public scandal is defined in the same way as public crime, making it de facto illegal for individuals to peacefully gather to claim the rights of sexual minorities;

(d) The laws allow the authorities wide powers to monitor people's activities, infringing the right to privacy and "chilling" social interaction and political activity. For example, the Telecommunications Act makes it illegal to knowingly send a message, by any form of communication, that violates public order and morals or is harmful to any person's safety.[10] The Law on Press and Publications authorizes the Government to censor, inter alia, communication exchanges made using any sort of device, including the Internet and smartphone applications, that might prejudice the safety and security of the State, without the permission of the competent authorities, or that might defame the Sultan, implicitly or explicitly, offend the ruling system or promote matters violating "the principles of the true Islamic religion".[11] In interactions with civil society activists, the Special Rapporteur was repeatedly told of hacked e-mail and social media accounts and of civil society activists who were repeatedly summonsed to meet with intelligence officers, who had detailed knowledge of their movements and activities. Such surveillance, even if it does not lead to formal criminal charges, has the effect of intimidating people and spreading fear among those who wish to speak out and work for reforms in Oman. Most activists that the Special Rapporteur met with believed that it was designed with that goal in mind.

B. Practice

20. The Special Rapporteur's extensive discussions with civil society actors and authorities revealed a predominant concern on the part of the State with maintaining peace, order and stability, to the extent of excessive control. Those are legitimate concerns for any State, but it is essential that the measures taken to ensure stability do not impair the essence of any fundamental right. Restrictions must also meet the strict standards of necessity and proportionality set out in international law. The Special Rapporteur has previously stressed that there should be a presumption in favour of the right to freedom of peaceful assembly, meaning that assemblies should be deemed de facto lawful and as not constituting a threat to public order (see A/HRC/23/39, paras. 49-50). He is therefore concerned at the reports from Oman of restrictions on assemblies, excessive use of force by the police, threats, arbitrary arrests, abductions, detentions in secret locations and torture at the hands of authorities.

21. During meetings with civil society activists, the Special Rapporteur heard harrowing reports of activists who had been kidnapped off the streets, sometimes hooded and handcuffed, and taken to secret detention locations, where they were interrogated for long hours and often detained for days. Several sources who had been detained reported that they were subjected to loud music at all hours and that authorities sometimes left the lights on

[10] Royal Decree 30/2002 (amended by Royal Decree 64/2007), Telecommunications Regulatory Act and Amendments, 12 March 2002, art. 61

[11] Royal Decree 49/1984 (amended by Royal Decree No 95/2011), Press and Publications, 29 May 1984, arts. 25 and 26

24 hours a day.[10] Beyond detention, activists are subjected to stigmatization in the largely government-controlled press, which not only affects the activists themselves but also members of their families, thus chilling their activities.

22. The Special Rapporteur is concerned that arrests and prosecutions for certain offences, particularly defamation of the Sultan, illegal gatherings and attempts to overthrow the Government, are used not to punish actual criminal activity but to suppress activists who call for reform and advocate for increased realization of human rights. His concern is not allayed by the fact that some activists arrested are not subsequently prosecuted. Rather, he believes that the practice of "arrest-interrogate-release" could be used as a tactic to intimidate and control. That practice should be vigorously discouraged. Activists know that charges stemming from an earlier arrest could be revived at opportune times and used as leverage to discourage them from continuing their activities.

23. The Special Rapporteur was informed that gatherings of more than nine people required de facto approval from authorities, an administrative procedure that cannot be contested before a court of law. The authorities are under no obligation to offer reasons for their decision to disperse an assembly and can broadly interpret what is perceived to be a threat to public order. Under international law, prior authorization is not required for the exercise of the freedom of peaceful assembly. At most, a prior notification regime may be in place to enable the authorities to take measures to facilitate the assembly and to protect public safety and the rights and freedoms of others (see A/HRC/20/27, para. 28). Spontaneous gatherings should be recognized by law and exempted from prior notification requirements (ibid., para. 29).

24. The Special Rapporteur met with several activists who described how they and their colleagues had been arrested or in several cases abducted, transported to secret detention locations, denied access to their lawyers and not brought before court within the stipulated period of 48 hours. Ismail al-Muqbali described how he was kept in solitary confinement for three months. It was only after 60 days in detention that he was brought before a court.

25. The authorities also frequently prevail upon the owners of establishments open to the public, such as coffee shops, hotels and Internet cafes, not to host meetings to discuss issues that are deemed political or critical of the Government. The Special Rapporteur was informed that awareness-raising meetings that are open to the public, such as book clubs and even social gatherings, have all been targeted by the authorities for dispersal.

26. In his report submitted to the Human Rights Council in April 2013, the Special Rapporteur said that he was very concerned about the high number of arrests, of charges and of sentencing against individuals who had taken part in or had monitored peaceful assemblies during the reporting period, and that the replies transmitted by the Government had not dispelled his concerns about the physical and psychological integrity of individuals exercising their rights to freedom of peaceful assembly and association in the country (see A/HRC/23/39/Add.2, para. 300).

27. His concerns were heightened by reports of non-governmental organizations and the media referring to the unprecedented use of force and mass arrests of peaceful protestors who gathered in Muscat and Sohar in January and February 2011 to demand, inter alia, better working conditions, higher standards in education, the end of corruption and economic and political reforms. Furthermore, reports indicate that a massive peaceful protest was violently dispersed by the police in Sohar in April 2011, resulting in one death.

[10] The Committee against Torture has noted that sleep deprivation, when used for prolonged periods, constitutes a breach of the Convention against Torture (see, for example, CCPR/C/USA/CO/3/Rev.1, para. 13).

dozens of injuries and 23 arrests. In May 2011, about 80 people were arrested in Muscat while participating in a peaceful protest calling for the release of other protestors, themselves recently arrested in Muscat, Salalah and Sohar. Among the detainees were young lawyers, bloggers, writers and members of unregistered organizations, including women.

28. During the Special Rapporteur's visit, the authorities acknowledged arresting protestors and placing several in solitary confinement following the peaceful protests in January and February 2011. They also admitted that one person had been killed on 27 February 2011 and another on 28 April 2011 following a protest and that investigations were ongoing. They further confirmed that individuals involved in the protests had been arrested at their homes in March 2011, but that they had been released without charges after signing pledges not to commit acts of destruction of public property (see A/HRC/18/51, case No. OMN 1/2011). The Government has also informed the special procedures of the Human Rights Council that the court of first instance released all the remaining accused on 18 May 2011.

29. The Special Rapporteur joined an urgent appeal to Oman on 21 June 2012 concerning the reported arrests of three members of the Omani Group for Human Rights, including one woman, while on their way to Fohod oil field to monitor a strike on 31 May 2012 (A/HRC/22/67, p. 23). In its reply, the Government stated that the three individuals had been handed over to the Public Prosecutor on the charges of "incit[ing] participation in a strike gathering" and "stir[ring] unrest in the oil sector" (ibid.). During the country visit, government representatives asserted that the Group had had no authorization or mandate to go into the oil fields. While the Special Rapporteur does not dispute the Government's position that the oil fields are vital installations on which the economy depends, he does not consider that this necessarily implies that no peaceful assemblies or monitoring of assemblies can take place at those locations. He reiterates that blanket restrictions on peaceful assemblies are intrinsically disproportionate and should thus not be imposed (see A/68/299, para. 25).

30. In the weeks that followed the arrests of the Omani Group for Human Rights members, the authorities reportedly began actively apprehending online activists for their comments on social platforms such as Facebook and Twitter. The police also reportedly cracked down on a peaceful sit-in calling for the release of political detainees and arrested more than 20 people for seditious assembly, blocking traffic, insulting the Sultan and using the Internet to publish defamatory material.[13]

31. Following a series of group trials during July, August and September 2012, the Muscat court of first instance reportedly convicted 29 people and sentenced 28 of them to between 6 and 18 months in prison and to fines ranging from 200 to 1,000 rials.[14] According to reports, the appeal court in Muscat upheld all the convictions in December 2012.

32. The Special Rapporteur is also concerned about the case of 11 people, including two women, who were convicted in 2012 on charges including insulting the Sultan, using the Internet to send defamatory material, unlawfully gathering and publishing harmful and provocative material. The Special Rapporteur sent a joint appeal to Oman on 27 February 2013, 15 days after the 11 detainees reportedly started a hunger strike over delays in

[13] Amnesty International public statement, "Oman must end assault on freedoms of expression and assembly", 21 December 2012. Available from www.amnesty.org/ar/library/asset/MDE20/006/2012/en/0009f1b4-1d9f-4943-ae89-7c6aa44b4dd1/mde200062012en.pdf.

[14] Human Rights Watch, *World Report 2013*, Oman, available from www.hrw.org/world-report-2013/country-chapters/oman?page=1.

processing their cases (see A/HRC/23/51, case OMN 1/2013). On 22 March, the Government informed the special procedures of the Human Rights Council that the Sultan had pardoned the 11 individuals.

33. In August 2013, the Special Rapporteur received information on additional protest movements in Liwa, a city north of Sohar, against the pollution of the waters of the port by petrochemical industries. Police reportedly dispersed the demonstrations with tear gas and water cannons and arrested several people, including Talib al-Mamari, who was elected to the Consultative Council in 2011 and known for his moderate critical opinions. Mr. Al-Mamari was reportedly arrested at night at his brother's home and charged with inciting a crowd and seditious assembly. His sentence was reportedly upheld by the court of appeal, but overturned by the Supreme Court because of a procedural error. The retrial was held in Muscat on 6 August 2014. He reportedly faces a four-year prison term and is currently in custody awaiting his appeal.

34. The Special Rapporteur firmly believes that the rights to freedom of peaceful assembly and of association apply both offline and online, as the Human Rights Council has affirmed in its resolutions 21/16 and 26/13. He was therefore concerned to hear during his visit that the authorities had reportedly employed a variety of tactics to clamp down on and control the use of information and communications technology. There are widespread reports that authorities systematically hack into online accounts and hijack them and flood social media such as Twitter with an endless stream of hashtag references, thus disrupting discussion on specific topics. The example of the Omani Group for Human Rights is instructive. In addition to online surveillance, authorities reportedly went as far as preventing the group members from communicating on WhatsApp. Voice over Internet Protocol services such as Skype are blocked in Oman, a situation that the Special Rapporteur experienced first hand. The Special Rapporteur reiterates that States have the obligation to ensure that online assemblies are facilitated in accordance with international human rights standards.

35. Members of civil society who met with the Special Rapporteur made repeated mention of the Internal Security Forces of Oman, a government agency that they say is primarily responsible for the reported harassment, abduction, unlawful detention and torture of peaceful protestors. The Special Rapporteur wishes to restate his deep regret that his requests to meet with representatives from the agency were not granted. It would appear that the body is a key interlocutor and the Government lost an opportunity to engage in frank discussions on the role it plays. Of greater concern is the opaqueness with which the agency operates. Officials from the Government itself told the Special Rapporteur that the agency is a secret intelligence unit with an unknown configuration and budget that reports directly to the Sultan.

36. The Special Rapporteur is also unaware as to where the agency stands in relation to the Royal Oman Police, the latter being the authorities officially charged with maintaining law and order in the country. The police is the only body authorized to carry out arrests. Its Directorate General of Operations plans and implements police activities related to maintaining public security and safety. The Directorate also makes decisions on the granting of permits to hold assemblies and the security arrangements during these events.

IV. Challenges to the exercise of the right to freedom of association

A. Legal framework

37. The right to freedom to form associations is virtually non-existent in Oman, despite the fact that it is nominally protected as a constitutional right under article 33 of the Basic Law. The 1972 Law on Associations, since amended several times,[11] places severe and sweeping restrictions on the right, making it virtually impossible to establish a legal association without government consent, cooperation and control. The law, inter alia:

(a) Limits the type of associations that may be formed, their objectives and the areas that they can cover;

(b) Bans political parties;

(c) Makes registration mandatory;

(d) Gives the Ministry of Social Development unbridled discretion to approve or deny registration applications for any reason the Minister deems relevant;

(e) Requires associations to obtain government approval before they work with, or receive funding from, foreign organizations;

(f) Requires associations to notify the Government of any planned meeting at least 15 days in advance and to provide a copy of the meeting minutes;

(g) Prescribes that a representative of the Government attend the meetings of associations.

38. The provisions run counter to the most elementary precepts of international law on the subject of freedom of association, and effectively turn associations into pseudo-governmental bodies. It is critical that associations have the ability to remain independent of the Government, as the right to freedom of association is fundamentally a matter of providing a vehicle for individuals to come together and express their concerns, free of official sanction or interference. It is to be expected that people's concerns — in any country — would include criticism of the Government and its policies. Excessive government control over the establishment and operation of associations is a natural obstacle to that. The Government pledged to amend the law during its universal periodic review in January 2011. The Special Rapporteur was pleased to hear during his visit that the law was being reviewed, but expresses his disappointment that the Government did not share an official draft of the law or elaborate on the specific changes that were being made. He hopes that the amendments will greatly improve the current legal environment and place the emphasis on creating an enabling environment for civil society. He remains available for technical assistance on the content of the law.

39. In addition, political parties and other associations that "are against Oman's statutes or social and economic systems" are banned under article 134 of the Penal Code. Any breach of these provisions results in the dissolution of the association, confiscation of assets, 3 to 10 years' imprisonment of the founding members and the board of directors and a five-year prohibition on their right to hold a leadership position in an association. Members face one to three years' imprisonment.

[11] See Royal Decrees 14/2000, 30/2001 and 23/2007.

40. In addition, the Special Rapporteur refers to the following laws, which also limit the enjoyment of association rights in Oman:

(a) The Law on Labour Unions gives workers the right to form trade unions.[16] According to Ministerial Decision 570/2012, a trade union can be formed by any private sector organization with 25 or more employees and, once registered, has an independent legal identity.[17] The Special Rapporteur notes with appreciation the recent efforts made by Oman in bringing Omani law closer into alignment with international standards. Nevertheless, he has received reports criticizing the far-reaching influence of the Government over the General Labour Union, the umbrella organization that serves as a confederation of Oman's labour unions;

(b) The Law on Nationality provides that an Omani born citizen will lose his/her citizenship if he or she "belongs to a group, party or organization that embraces principles or doctrine harming Oman's interests, or either works for a foreign country in any capacity in or outside Oman and does not resign before the imposed deadline or works in favour of a hostile State."[18] The Special Rapporteur is concerned that the law could be used to threaten or punish civil society activists who gather to express dissent or criticism in a specific field of common interest.

B. Practice

41. The Special Rapporteur is extremely concerned about the restrictive environment for the exercise of the right to freedom of association in Oman.[19] The authorities cite security considerations as the rationale for such a restrictive approach to that right in Oman. However, the Special Rapporteur believes strongly that restrictive approaches to both that right and the right to freedom of peaceful assembly are actually counter-productive. It is natural and inevitable for people in any society at some point to experience dissatisfaction, the urge to improve things and even anger. The rights to freedom of peaceful assembly and of association are safety valves that allow such emotions to be released in a non-violent and productive manner. Individuals need to feel that they have the means to bring about change peacefully and to improve things or gain redress. If they do not, they will find other ways to change things and, as has been seen in recent years, many such ways can be extremist, non-peaceful or unproductive. Indeed, the Special Rapporteur believes that restrictions on peaceful and open civil society movements are likely to push associations underground, where they are marginalized, criminalized and ultimately more likely to transform into extremist movements.

42. The Special Rapporteur is deeply concerned about the role of the Ministry of Social Development in the regulation of associations. The Ministry is an executive-branch body

[16] Royal Decree 35/2003, as amended by Royal Decree 74/2006 on Labour Unions, dated 8 July 2006.
[17] Ministerial Decision 570/2012 promulgating the formation, functioning and registration of trade syndicates, trade unions and the General Federation of Oman Trade Unions, 15 October 2014.
[18] Royal Decree 1/1972 as amended by Royal Decree 38/2014, Nationality, 11 August 2014.
[19] The Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women reviewed Oman in 2001 and 2006, and 2011, respectively. The latter Committee said that it was "concerned about the absence of a vibrant civil society, including autonomous and active women's human rights organizations" (see CEDAW/C/OMN/CO/1, para. 31). The Committee on the Rights of the Child stated in 2001 that "insufficient efforts have been made to involve civil society, particularly in the area of civil rights and freedoms, with respect to awareness-raising and in the implementation of the Convention" (see CRC/C/15/Add.161, para. 14), but took note in 2006 of the "active role played by civil society in the provision of services, particularly health and social services, for example for children with disabilities" (see CRC/C/OMN/CO/2, para. 20).

whose Department of Social Societies and Community Clubs exercises vast control over the civil society sector, including handling the registration of associations, monitoring associations' operations and supervising their activities. In addition, the Department limits registration to associations that fall under the one of its four identified thematic branches:

(a) The department of charities and funds, for associations that contribute to social care and economic, social and cultural development;

(b) The department of professional associations, for associations that represent professional branches;

(c) The department of Omani women's associations, for associations that work in the social and cultural spheres;

(d) The department of community social clubs, for associations that organize cultural, social and sporting activities.

43. The Special Rapporteur finds it troubling that an executive branch body has total authority over who can form and operate an association and on what issues associations can focus. The Minister for Social Development informed the Special Rapporteur that associations would not be denied registration provided that they met the requirements of the law and did not duplicate the activities of an association already registered. The Special Rapporteur was informed of situations in Oman where political organizations had been denied registration because their work was "already covered" by other associations.[20] Other sources told the Special Rapporteur that an association working to protect forest land in the Dhofar region had been denied registration because its work was "too similar" to that of another group based in Muscat working more generally on environmental issues.

44. In the same vein, the Special Rapporteur received a report indicating that, on 3 June 2014, the Ministry of Social Development had rejected the registration application of an association for people with visual disabilities on the basis that an association for the blind already existed in Oman. The association filed a case first in the court of first instance and then in the Court of Appeal, arguing that the definition of "visual disabilities" was wider than "blind" and that the pre-existing association for the blind was limited to adults. The court ruled against it in June 2014, basing its decision on the rightful use by the Ministry of Social Development of its margin of discretion, as stipulated in the Law on Associations.

45. An adverse effect of the Ministry of Social Development's immense power over registrations is the centralization of decision-making in Muscat. As such, it is probably not a coincidence that most of the registered associations in Oman are located in Muscat. This centralization serves to silence the needs and demands of civil society organizations in regions outside the capital. It is not enough for Muscat-based organizations to open branches outside of the capital; there is also a need for robust and independent associations at the local and grass-roots levels.

46. Associations can be de-registered if they do not carry out the activities for which they were established. If the association is deemed not to be running smoothly, the Ministry of Social Development may step in to suggest restructuring to "promote efficiency". In the view of the Special Rapporteur, this expansive oversight by the Ministry constitutes unjustifiable interference in the operations and activities of associations.

47. Independence from the Government and other institutions is one of the founding aspects of the right to freedom of association. The right is meant to empower individuals to come together and work for their interests, so long as they are doing so for legal and

[20] Reply of the Minister of Social Development when questioned about registration arrangements for political organizations, Muscat, 9 September 2014.

peaceful purposes. The Special Rapporteur urges the Government to accord civil society actors the same freedom to establish themselves as businesses, even where they are working on the same issues. It is unlikely that Government would step in to restructure a private business, even if it was deemed to be "operating inefficiently", or that the Government would prohibit, for example, the establishment of a hotel because another was established in the same area. There is no justifiable reason to distinguish between civil society and business sector organizations, both of which are non-State actors.

48. The Special Rapporteur is gravely concerned at the inability to associate of those independent activists who express dissenting views. The activists that the Special Rapporteur met with in Oman and elsewhere, from both domestic and international organizations, reported that the right to associate to express critical opinions is virtually non-existent.

49. At the time of the Special Rapporteur's visit, there were 26 professional associations, 28 charities, 54 women's associations, 12 community clubs and 196 labour unions registered in Oman.[7] There was, however, a total lack of associations with objectives falling outside the scope of work defined by the Department of Social Societies and Community Clubs. The main activities of registered associations are the support and financing of economic, social and cultural programmes. For example, the work of women's associations is restricted to health, education and poverty reduction. The Committee on the Elimination of Discrimination against Women has expressed concern that equality between women and men is limited to the public rights and does not extend to the private sphere relations of family and marriage (see CEDAW/C/OMN/CO/1, para. 13). However, there are no women's associations in Oman that strive to achieve equality between women and men from a civil and political rights perspective or work on human rights issues, such as violence against women.

50. Associations pursuing political reforms and government accountability and transparency are systematically denied registration. For example, the Change and Reform and Association against Corruption associations were both denied registration in 2011. That is all the more striking because both the Government and civil society repeatedly raised the issue of corruption in their meetings with the Special Rapporteur, with all concerned expressing the need to combat it. The Special Rapporteur underlines that this is a point of convergence between the authorities and civil society that Government officials should welcome. Voices from outside the Government are needed to end corruption and hold the Government accountable. It is axiomatic that organizations, whether private or public, require independent, external audits in order to be deemed credible and transparent.

51. In meetings with the Government, several officials also emphasized that Omani society valued a culture of consensus. The Special Rapporteur considers that consensus requires open, unhindered dialogue among all stakeholders and should not involve silencing dissenting or critical voices. The Special Rapporteur emphasizes that an independent, free and robust civil society is a valuable partner in drawing up and implementing policies for combating corruption and promoting further growth.

52. Finally, the Special Rapporteur is deeply concerned by the inability of activists in Oman to associate freely online. As noted above, he observed first-hand that access to some of technologies for the delivery of voice communications and multimedia through Voice over Internet Protocol and instant messaging services was limited, and a number of bloggers and writers have been imprisoned for allegedly expressing dissenting views online.

[7] Numbers provided by the National Human Rights Commission of Oman on 9 September 2014.

53. The Special Rapporteur reiterates the importance of new communication technologies and the integral role they play in the enjoyment of the rights to freedom of peaceful assembly and of association. On 26 June 2014, the Human Rights Council adopted its resolution 26/13, on the promotion, protection and enjoyment of human rights on the Internet. Furthermore, in its resolution 21/16, the Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline. The Special Rapporteur echoes those calls and argues that information and communications technology is integral to the exercise of assembly and association rights. The Special Rapporteur is convinced that the technology is both a means to facilitate fundamental rights offline and a virtual space where the rights themselves can be actively exercised.

V. National Human Rights Commission

54. Royal Decree 124/2008 of 15 November 2008 establishes the National Human Rights Commission and defines its prerogatives. Article 1 of the Decree provides that the Commission is administratively affiliated to the Council of State. The Decree stipulates that the Commission shall be independent and that it has been established for the "protection and follow up of human rights and freedom in the Sultanate according to basic statute of the State and the international covenants and agreements".[22]

55. The Commission is mandated to, inter alia:

(a) Monitor human rights violations;

(b) Liaise with the concerned authorities on matters related to human rights;

(c) Submit to the Council of Ministers for approval an annual workplan on the implementation of human rights;

(d) Coordinate input on human rights from foreign States, international organizations and non-governmental organizations.

56. The Special Rapporteur notes that the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights accredited the Commission with B status in November 2013, i.e. not fully in compliance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The Sub-Committee on Accreditation considered the following factors in assigning the grade:

(a) **Representatives**. Royal Decree 124/2004 stipulates that the Commission shall have 14 members, of which two are members of the legislative branch and six of the executive. The Sub-Committee considers that government officials should not be represented in a national human rights institution. For the same reason, members of parliament should not be members of nor participate in the decision-making organs of such institutions. Their presence and participation in the decision-making body of such institutions has the potential to affect both the real and perceived independence of the institution;[23]

[22] Royal Decree 124/2008, Human Rights Commission, 15 November 2008, art. 7.1.

[23] See Report and Recommendations of the Session of the Sub-Committee on Accreditation, Geneva, 18–22 November 2013, sect. 2.4, para. 1. Available from http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/SCA-Reports.aspx.

(b) **Mandate**. The Decree fails to provide the Commission with a clear mandate and appropriate powers to promote and protect human rights in the areas specifically highlighted by the Paris Principles;[24]

(c) **Selection**. The Decree fails to meet the requirement for clear, transparent and participatory selection of candidates.[25]

57. When reviewing Oman, the Sub-Committee looked at the questions of immunity, tenure of members, interaction with the international human rights system, annual reports, funding and conflict of interests, and encouraged the Commission to advocate for the inclusion in Royal Decree 124/2008 of a specific mandate to encourage the ratification and implementation by Oman of international human rights standards.[26]

58. The Special Rapporteur echoes the Sub-Committee's concerns. Civil society activists similarly expressed a lack of confidence in the National Human Rights Commission, and felt that the Commission could do more to bridge the gap between the Government and civil society. The Special Rapporteur agrees. The members of the Commission corroborated that sentiment when they admitted that civil society activists did not approach the Commission with information on violations of human rights.

59. The Special Rapporteur notes the work done by the Commission in monitoring and reporting on peaceful assemblies, including observing the trials of those arrested during such assemblies, while recognizing the limitations in its mandate. The Special Rapporteur is pleased to learn that Oman supported the recommendations made during its universal periodic review to establish an independent national human rights commission and adapt it fully to the Paris Principles, with a broad and clear mandate.

60. The Special Rapporteur emphasizes that, although the scope of Commission's mandate is of concern, its credibility depends upon how it executes its existing mandate. He was encouraged by the positive energy displayed by the members and staff of the Commission. He notes with appreciation that the Commission is seeking to strengthen its role by, inter alia, advocating for the ratification of ILO conventions No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise and No. 98 (1949) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively; encouraging associations to participate in the next universal periodic review exercise; visiting detainees in prisons; and disseminating information about human rights though meetings with various stakeholders. The Special Rapporteur stresses that the Commission's robust engagement with the issues that fall within the current scope of its mandate is a good indication that a new, better-defined mandate, together with appropriate powers, would be a useful tool in the hands of the Commission.

61. The Special Rapporteur remains available to provide technical assistance to the Commission on the rights under his mandate.

VI. Assistance activities of the Regional Office for the Middle East and North Africa of the Office of the United Nations High Commissioner for Human Rights

62. The Regional Office for the Middle East and North Africa of the Office of the United Nations High Commissioner for Human Rights (OHCHR) has worked to, inter alia:

[24] Ibid., para. 2.
[25] Ibid., para. 3.
[26] Ibid., paras. 4–10.

(a) Respond to ongoing developments;

(b) Follow political, legal and institutional reforms;

(c) Remain fully engaged with the transition processes.

63. The Special Rapporteur welcomes the work of OHCHR in developing training programmes to enhance the capacity of civil society and the National Human Rights Commission with regard to international mechanisms for human rights, including the universal periodic review, and responding to requests for technical assistance by the authorities.

64. The Special Rapporteur urges OHCHR to continue its activities in providing technical support to government institutions and civil society. He also urges it to reach out to local civil society activists, particularly online civil and political rights activists, including women, both within and outside of Muscat.

VII. Conclusion and recommendations

A. Conclusion

65. The rights to freedom of peaceful assembly and of association are both platforms and collective exercises of other fundamental freedoms; they foster accountability, ethnic equity, cultural diversity, tolerance, participation and good governance, which in turn promote stability and peace.

66. In his meetings with the Government, the Special Rapporteur observed a consistent focus on maintaining peace, order and stability in Oman, often used as the rationale for limiting assembly and association rights. Nevertheless, in his view, human rights are the foundation for true and sustainable stability. Stability flows organically through involvement and consensus, as part of a social contract in which everyone freely participates.

67. The legal environment for the exercise of the rights to freedom of peaceful assembly and of association in Oman is problematic and needs to be strengthened with reference to international human rights standards. The country's impressive achievements in building the economy, maintaining stability and modernizing society are threatened in the long term by a climate in which the populace is not free to associate and organize itself to address its concerns or pursue its own interests. Silencing voices of dissent is not a viable approach going forward. When a Government fails to provide an outlet for popular sentiment, it loses a valuable opportunity to feel the pulse of the nation, and effectively creates a sealed vessel under pressure that will eventually explode with dire consequences.

68. The Special Rapporteur makes the recommendations below, confident that the Government will take their implementation as an opportunity to consolidate the progress of Oman towards the realizations of the rights to freedom of peaceful assembly and of association. Its efforts would undoubtedly resonate at the regional and international levels and influence other countries positively.

69. The Special Rapporteur reiterates that he stands ready to provide technical cooperation to the Government as it implements the recommendations.

B. Recommendations

70. The Special Rapporteur would like to offer the following general recommendations:

(a) Expedite the ratification of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights;

(b) Withdraw all outstanding reservations to human rights treaties in the interest of ensuring the full enjoyment of human rights by everyone in Oman;

(c) Ensure in law and in practice that the rights to freedom of peaceful assembly and of association play a decisive role in the emergence and maintenance of effective democratic systems as channels for dialogue, pluralism, tolerance and broadmindedness, where minority or dissenting views or beliefs are respected;

(d) Ensure a conducive and safe environment for everyone exercising or seeking to exercise his or her rights to freedom of peaceful assembly and of association, abolish legislation that criminalizes homosexuality and ensure that State obligations to achieve non-discrimination and equality are immediate and not subject to progressive realization (see A/HRC/26/29, para. 19);

(e) Ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly or of association, or subjected to threats or use of violence, harassment, persecution, intimidation or reprisals;

(f) Ensure that any restrictions on the rights to freedom of peaceful assembly and of association are guided by the principle that they must not impair the essence of the right and that they are prescribed by law; are necessary in a democratic society; are proportionate to the aim pursued; and are subject to an independent, impartial and prompt judicial review;

(g) Ensure freedom of access to the Internet in accordance with international human rights standards, including the protection of the rights to freedom of peaceful assembly and of association online;

(h) Provide individuals exercising their rights to freedom of peaceful assembly and of association with the protection offered by the right to freedom of expression;

(i) Ensure that administrative and law enforcement officials are adequately trained in relation to international human rights norms and standards governing the rights to freedom of peaceful assembly and of association;

(j) Ensure that law enforcement officials who violate the rights to freedom of peaceful assembly and of association are held personally and fully accountable for such violations by an independent and impartial oversight body, and by the courts of law;

(k) Ensure that the victims of violations and abuses of the rights to freedom of peaceful assembly and of association have the right to an effective remedy and to obtain effective redress;

(l) Raise public awareness on the laws and regulations pertaining to the rights to freedom of peaceful assembly and of association.

71. Concerning the right to freedom of peaceful assembly, the Special Rapporteur calls on the relevant authorities to:

(a) **Guarantee in law and in practice the right to freedom of peaceful assembly of everyone, including citizens and non-citizens, without exception;**

(b) **Adopt a law that clearly and explicitly establishes the presumption in favour of holding peaceful assemblies;**

(c) **Repeal laws that criminalize the act of defaming the Head of State or other political figures;**

(d) **Amend Royal Decrees 30/2002[27] and 49/1984[28] in full consultation with civil society and other relevant stakeholders in order to ensure compliance with international human rights standards, including the right to freedom of peaceful assembly;**

(e) **Ensure that allegations of excessive use of force by law enforcement officers are effectively investigated and that individuals responsible are held accountable;**

(f) **Release all those detained for exercising the right to freedom of peaceful assembly;**

(g) **Endorse a prior notification regime for all peaceful assemblies in order to better facilitate and protect them;**

(h) **Recognize in law, and facilitate, spontaneous peaceful assemblies, which should be exempted from prior notification requirements;**

(i) **Ensure that restrictions imposed on peaceful assemblies can be appealed before an impartial and independent court.**

72. **Concerning the right to freedom of association, the Special Rapporteur calls on the relevant authorities to:**

(a) **Adopt without delay a new law on associations that complies with international human rights standards, including the right to freedom of association;**

(b) **Amend article 134 of the Penal Code of Oman and any other legislation that disproportionately restricts the right to freedom of association;**

(c) **Amend Royal Decree 38/2014[29] in full consultation with civil society and other relevant stakeholders to ensure that it complies with international human rights standards, including the right to freedom of association;**

(d) **Offer all citizens, including political opponents, the right and opportunity, without any distinctions and without unreasonable restrictions, to freely form and register a political party and operate in a pluralistic political sphere;**

(e) **Promote the rights of women to freely associate and enable them to participate more effectively in public life;**

(f) **Ratify core labour standards protecting the right to freedom of association, including International Labour Organization conventions No. 87 (1948)**

[27] The Decree makes it illegal to knowingly use any form of communication to send a message that violates public order and morals or is harmful to any person's safety.

[28] The Decree authorizes the Government to censor communication exchanges with any sort of device.

[29] The Decree provides that an Omani-born citizen will lose his/her citizenship if he or she belongs to a group, party or organization that embraces principles or doctrine harming Oman's interests, or either works for a foreign country in any capacity in or outside Oman and does not resign before the imposed deadline or works in favour of a hostile State.

concerning Freedom of Association and Protection of the Right to Organise and No. 98 (1949) concerning the Right to Organise and to Bargain Collectively;

(g) Refrain from interfering with the work of the General Labour Union;

(h) Endorse a regime of notification whereby an association is considered a legal entity as soon as it has notified its existence to the relevant authorities;

(i) Allow unregistered associations to operate;

(j) Avoid interference with the operations of associations, including funding and private meetings;

(k) Ensure that any partnerships between Government and civil society are voluntary.

73. In addition, the Special Rapporteur calls upon the National Human Rights Commission to:

(a) Apply the recommendations of the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights without further delay to gain credibility and enhance its protection and advocacy roles;

(b) Enquire proactively and take a public critical stand on violations of the rights to freedom of peaceful assembly and of association;

(c) Clearly and publicly articulate and disseminate international human rights norms and standards governing the rights to freedom of peaceful assembly and of association;

(d) Engage further with civil society to address its concerns in relation to the exercise of the rights to freedom of peaceful assembly and of association;

(e) Offer training activities to government officials and members of civil society on international human rights norms and standards, including those governing the right to freedom of peaceful assembly and of association;

(f) Follow up and monitor the implementation of the recommendations contained in the present report.

74. The Special Rapporteur also calls upon civil society organizations to:

(a) Use every opportunity to participate in decision-making processes;

(b) Seize all opportunities for training offered to its members;

(c) Engage with various stakeholders, including the international community;

(d) Follow up and monitor the implementation of the recommendations contained in the present report.

75. The Special Rapporteur calls on the United Nations and other intergovernmental organizations, and other stakeholders, to:

(a) Advocate with the relevant authorities concerning respect for the rights to freedom of peaceful assembly and of association;

(b) **Build the capacities of the relevant authorities, the National Human Rights Commission and civil society organizations;**

(c) **Monitor the implementation of the recommendations contained in the present report.**

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai

Addendum

Mission to Kazakhstan* **

Summary

The Special Rapporteur on the rights to freedom of peaceful assembly and of association carried out an official visit to Kazakhstan from 19 to 27 January 2015 to assess the situation of freedom of peaceful assembly and of association in the country, upon the Government's invitation.

Following an introductory section, sections II and III contain a series of good practices and remaining challenges in relation to the enjoyment of the rights to freedom of association for political parties, non-profit organizations, trade unions and religious associations and to freedom of peaceful assembly.

Finally, the Special Rapporteur formulates his recommendations to overcome the challenges he identified.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission and Russian only.

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Annex

[English and Russian only]

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on his mission to Kazakhstan (19-27 January 2015)

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I. Introduction

1. Pursuant to Human Rights Council resolutions 15/21 and 24/5, the Special Rapporteur on the rights to freedom of peaceful assembly and of association visited Kazakhstan from 19 to 27 January 2015, at the invitation of the Government. The purpose of the visit was to assess the situation of freedom of peaceful assembly and of association in the country.

2. The Special Rapporteur would like to thank the Government for accommodating his requests for meetings and expresses sincere appreciation to all persons who took the time to meet with him in a spirit of constructive dialogue. The Special Rapporteur commends the Government for extending a standing invitation to all special procedures mandate holders and for having accommodated the visit of six special rapporteurs since July 2009. He considers it an expression of the Government's willingness and commitment to work jointly with the mechanisms of the Human Rights Council to strengthen the protection and promotion of all human rights, including the rights to freedom of peaceful assembly and of association. He takes this opportunity to thank the Government for responding in detail to the communications he has sent so far, as well as to a letter he sent after his visit.

3. The Special Rapporteur also expresses his gratitude to the Office of the United Nations Resident Coordinator in Kazakhstan and to the Regional Office for Central Asia of the Office of the United Nations High Commissioner for Human Rights (OHCHR), for its excellent support prior to and during the visit.

4. While in Kazakhstan, the Special Rapporteur travelled to Astana, Almaty, Aktau and Zhanaozen. He met with representatives from the executive, legislative and judicial branches in Astana and with regional and local authorities in Almaty, Aktau and Zhanaozen. He also met with representatives of the national human rights institution, international organizations, the diplomatic community and civil society organizations, and with survivors and victims of grievous human rights violations that occurred during the Zhanaozen crisis of December 2011. The Special Rapporteur thanks the Government of Kazakhstan for facilitating his visit with Vladimir Kozlov, the jailed leader of the public association People's Party Alga!, who is currently serving a jail term of seven and a half years.

A. Historical and political background

5. Kazakhstan has been independent for nearly 24 years and has made considerable economic progress during that time. The level of economic growth and infrastructural development, including the construction of a new capital, has made Kazakhstan an important player in the region and globally. This admirable economic progress was achieved thanks to Kazakhstan's abundant natural resources, a remarkable mobilization of human resources and significant efforts to ensure stability in an ethnically and culturally diverse society. Today, Kazakhstan has ambitious international objectives, including a bid for a non-permanent seat on the Security Council for the period 2017-2018 and a proposal to host the 2022 Winter Olympic Games. The main goal of its national strategic plan, Strategy Kazakhstan 2050, is for the country to join the top 30 developed countries by the middle of the century.

6. Despite its apparent wealth and image as a prosperous and stable country, Kazakhstan faces a number of challenges. Socioeconomic inequalities remain and a number of human rights, especially the rights to freedom of peaceful assembly and of association, are not adequately enjoyed by all.

7. Since independence, President Nazarbayev has maintained firm control over political and economic affairs. He was elected as the first President of Kazakhstan in 1991 and has remained in power ever since, receiving 95.5 per cent of the votes with an 89.9 per cent turnout in the 2011 presidential elections. On 25 February 2015, following an initiative by the Council of the Assembly of People, supported by the Parliament, President Nazarbayev announced that an early presidential election would take place on 26 April 2015, instead of in December 2016 as originally scheduled. This left very limited time for the opposition to prepare.

8. The Special Rapporteur believes that Kazakhstan is at a crossroads. Its economic progress since independence has been impressive but the lack of corresponding advancements in the realm of other human rights renders this progress shaky. Although it may seem paradoxical, the true measure of a country's stability is its tolerance of peaceful questioning of the established order, that is, allowing outlets for peaceful dissent and political pluralism. Failure to create such outlets does not make the dissent go away; it only bottles it up in such a way that it may fester and explode as something much more violent than a street protest or reports of non-governmental organizations criticizing government policy.

9. During the visit, government representatives repeatedly stressed that stability and cohesion are integral aspects of Kazakh society, noting that the views of minorities — and of the nation as a whole — are represented in the Assembly of People of Kazakhstan. The Government of Kazakhstan should be praised for its preservation of stability and cohesion in a vast country composed of 140 ethnic and 17 religious groups. Nevertheless, the Special Rapporteur found that stability was often misused to wrongfully curtail the enjoyment of the rights to freedom of peaceful assembly and of association. He underlines that the protection of human rights and the maintenance of peace and harmony are two sides of the same coin and that are interrelated, mutually reinforcing and interdependent. He believes that the free exercise of the rights to peaceful assembly and of association provides authorities with unique insights into the challenges that people are facing. This is especially important for a nation such as Kazakhstan, which is young, large and placed in a relatively challenging and complex geopolitical context. There is no better way to understand the needs of people and no better check and balance for authorities.

B. Legal framework

10. Kazakhstan has ratified many international human rights instruments, including the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and its Optional Protocol, the International Convention for the Protection of All Persons from Enforced Disappearance and, in 2015, the Convention on the Rights of Persons with Disabilities, all of which contain provisions pertinent to the protection and promotion of the rights to freedom of peaceful assembly and of association. Kazakhstan has also ratified a number of International Labour Organization conventions, including the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Given the relatively short existence of Kazakhstan as an independent country, the commitment shown by the authorities to abide by international human rights law is commendable.

11. The Special Rapporteur welcomes the fact that the rights to freedom of peaceful assembly and of association are guaranteed in the Constitution, which also recognizes ideological and political diversity. He notes that the Constitution gives international treaties priority over domestic laws and allows them to be directly implemented. In theory, this allows courts to directly invoke, inter alia, articles 21 and 22 of the International Covenant on Civil and Political Rights in its judgements. He notes positively that the Constitution provides that the right to peaceful assembly may only be restricted by law in the interests of State security, public order and protection of health, rights and freedoms of other persons, which clearly suggests that freedom is the norm and limitations the exception, in accordance with international human rights law.

12. Despite these provisions, the Special Rapporteur is concerned that new laws have been adopted since the Zhanaozen crisis of 2011, in which at least 16 people were killed after government forces moved in on hundreds of oil workers protesting their conditions of employment, and used to curb the right to freedom of association. He is also concerned that, in the same period, participants in unsanctioned assemblies seem to have been increasingly subjected to intimidation, fines, imprisonment and administrative sanctions.

II. Freedom of association

13. Before discussing the issue of freedom of association proper, the Special Rapporteur would like to express serious concerns about an incident that occurred during his visit.

14. At the end of a meeting with members of civil society in Aktau on 24 January 2015, unknown individuals sitting in the back of a vehicle parked directly facing the entrance of the venue of the meeting were seen taking photographs of the Special Rapporteur's driver and of civil society representatives leaving the building. The equipment used and the manner in which the photographs were being taken left little doubt that the operation was carried out by secret police surveillance with the aim of instilling fear among activists.

15. The Special Rapporteur approached the individuals and demanded to know who they were and their purpose in taking the photographs, at which point they hurriedly drove off without responding. The Special Rapporteur made a formal complaint to the Head of the Mangystau Oblast Interior Department on the day of the incident. The next day, police informed the Special Rapporteur that a suspect had been apprehended and presented a purported confession from the person. The suspect, however, was not the same person that the Special Rapporteur had confronted in the parking lot.

16. The Special Rapporteur considers this incident to be a worrying episode illustrating both a lack of respect vis-à-vis those holding or perceived to be holding different views from the Government, and a sense of impunity by some officials.

17. The issue of reprisals against those cooperating with United Nations bodies and mechanisms, in accordance with Human Rights Council resolution 24/24, is taken extremely seriously by the Special Rapporteur. The incident in Aktau clearly illustrates that much more needs to be done to protect human rights defenders in Kazakhstan, particularly in the light of the country's candidacy for a non-permanent seat on the Security Council. An enabling environment for the development of civil society requires not only protection against acts of harassment and intimidation, but also proactive efforts to bring perpetrators of human rights violations to justice and positive measures to support those holding dissenting or minority views and opinions.

18. The Special Rapporteur notes that no other concern directly related to the visit has been brought to his attention since then, but he will continue to remain in touch with the civil society activists he met and will remain firm in his response to these issues.

A. Political parties

19. There is very limited space for the expression of dissenting political views in Kazakhstan. A web of policy, practice and perception contributes to a general environment where engaging in political activities is difficult, discouraging and sometimes dangerous. Dissent may be criminalized and critical political expression is often portrayed as threatening the stability of the State.

20. Kazakhstan amended its 1996 Law on Political Parties in 2002 and 2009. While the 2009 Law contained some improvements over the previous version, including a decrease in the number of members required to form a political party and the introduction of a provision allowing State registration of a political party even where there are errors in the party member lists, provided the errors do not affect the ultimate total number of party members required for State registration. However, much more needs to be done to ensure compliance with international standards.

21. The Law on Political Parties imposes onerous obligations prior to registration, including high initial membership requirements that prevent small parties from forming and extensive documentation that requires time and significant expense to collect. An initial group of no fewer than 1,000 founding members representing two thirds of the country's regions, a city with a national status and the capital, in total no fewer than 40,000 members, are required to form a political party.

22. A monitoring team from the Organization for Security and Cooperation in Europe described the most recent parliamentary elections in Kazakhstan, which were held in 2012, as not meeting the "fundamental principles of democratic elections", citing notably the "selective" deregistration of candidates and of a party list.[1] Although the ruling party, Nur Otan, and its predecessor, Otan, enjoys strong support from the population and has achieved major economic development since 1991, it has over the past two decades rarely left much room for dissenting or minority views. There are nine political parties, only three of which are represented in the Parliament. None is in a position to play the role of a true opposition party. For example, during the 2011 presidential elections, one candidate said that he had voted in favour of President Nazarbayev.

23. The Special Rapporteur is particularly concerned that the executive branch, through the Ministry of Justice, is responsible for registering political parties, since these entities will ultimately compete with it for power. The Law on Political Parties allows for perpetual extensions for the authorities to review a prospective party's application and does not set clear criteria to guide officials in charge of the registration process. While the authorities told the Special Rapporteur that individuals may use the court system to challenge registration decisions made by the Ministry, he observed that confidence in the independence of the judiciary was low. An independent body in charge of registering and regulating political parties is necessary to ensure transparency and accountability of State institutions.

24. Grounds allowing for the suspension or dissolution of a political party are another source of concern. In late December 2014, a court suspended the Communist Party, as the competent authority found a discrepancy in the party's member list.

25. On 1 January 2015, the new Criminal Code, the new Code on Administrative Offences and the new Code of Criminal Procedure entered into force. While some revisions represent a significant step forward towards strengthening of the rule of law in criminal proceedings, a series of other provisions pose serious risks of criminalizing and penalizing

[1] See www.osce.org/odihr/elections/89401?download=true.

legitimate activities of associations, including political parties. Of particular concern is article 174 of the Criminal Code, on incitement of social, national, family, racial, class or religious discord. The Code does not strictly define what is meant by "incitement of discord", which may leave the term open for arbitrary interpretation beyond the scope of articles 19 (3) and 20 of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. Such a provision already existed under the previous Criminal Code, but the new provision increases the maximum penalty from 12 to 20 years in prison. In fact, this vague provision can be used against any opposition party that seeks, for instance, to mobilize workers, as inciting social discord against employers.

26. During his visit, the Special Rapporteur met with Vladimir Kozlov, the jailed leader of Alga!, who is serving a jail term of seven and a half years after being convicted of "inciting discord". Mr. Kozlov was arrested in January 2012 after he publicly expressed support for oil workers demonstrating in the city of Zhanaozen and denounced human rights violations in the aftermath of the December 2011 crisis. Mr. Kozlov has been involved in opposition political movements since 2000, when he joined the party Democratic Choice of Kazakhstan, which was dissolved by a court order in January 2005, disturbingly also on charges of political extremism, inciting social tension and threatening national security.

27. At the time of his conviction, Mr. Kozlov was in a seven-year struggle to register Alga!, the successor to Democratic Choice of Kazakhstan. The court judgement against Mr. Kozlov was subsequently used to ban Alga! — along with 34 non-State media outlets — on the grounds that they were "extremist". In fact, the only crime committed by those outlets appears to have been reporting on the situation in Zhanaozen.

28. During Mr. Kozlov's trial, an expert commissioned by the court found that Mr. Kozlov had incited social discord by allegedly distributing leaflets stating "Get up off your knees, Kazakhs, throw the tyrant and the thief off your neck!". The expert testified that this act set the protesters against their employers and State authorities because the information in the leaflet suggested that since in many Kazakh regions people lived in poor conditions, they might rise up in support of the oil workers. Mr. Kozlov's actions also allegedly contributed to a systematic breakdown of labour negotiations between employers and workers. Mr. Kozlov was presented as linked to opposition figure Mukhtar Ablyazov, currently in pretrial detention in France on embezzlement charges.

29. The Special Rapporteur is seriously concerned that Mr. Kozlov's ordinary political speech and association activities were deemed criminal incitement of social hatred. Indeed, Mr. Kozlov's case — particularly the fact that his conviction portrayed his legitimate and peaceful political activity as threatening the stability of the country — seems emblematic of a more general trend to marginalize political leaders voicing dissent. This heavy-handed approach to quashing political opposition is all the more surprising given that the Government of Kazakhstan enjoys significant popular legitimacy and approval.

30. The Special Rapporteur believes that article 174 of the new Criminal Code has had a powerful chilling effect on political activity and that it is also an ineffective and counterproductive way of fighting actual extremism. Dissolving political groups or prosecuting their representatives on the aforementioned vague grounds puts any opposition political party or its members that are keen to compete against the ruling party at risk of being the subject of such criminal offences as incitement to discord or "spreading false information" or "defamation".

31. The limited space for the expression of opposition views is exacerbated by opposition parties' limited access to the media, which is also subject to restrictions. Several independent newspapers have been closed down in recent months, including the well-

known newspaper *ADAM bol*, which covered political and human rights issues and was shut down by a court order in December 2014. The order came after *ADAM bol* published an interview with an opposition figure who called for military support to the Ukrainian army against separatists in Ukraine.

32. The Special Rapporteur is mindful that Kazakhstan is a young, vast and diverse country with unique challenges. However, he considers that its current approach to regulating political parties — and political opposition in general — quashes dissent and pluralism in a way that is harmful to development and stability in the long term. Twenty-four years after independence, it is time for the political system to fully embrace pluralism. This will require extensive reforms, starting with a revamping of how political parties are regulated, and a more tolerant approach towards the expression of dissent. The Special Rapporteur has no doubt, however, that Kazakhstan has the resources and human capital necessary to become a beacon of development and democracy, not just in Central Asia, but globally.

B. Trade unions

33. In June 2014, Kazakhstan adopted a new law on trade unions and gave the unions one year to comply with the new rules. At the time of writing the present report, the law had not yet been fully implemented.

34. Broadly speaking, the new law imposes mandatory affiliation of trade unions to regional or sectorial federations. It denies trade unions the right to freely form and join labour organizations of their choice. These new requirements fall short of international law, which stipulates that the right not to belong to an association is a core component of freedom of association. The Special Rapporteur recommends that the authorities revise the new law on trade unions to bring it in line with international standards as highlighted by the International Labour Office in its memorandum of technical comments on the draft law on trade unions of Kazakhstan.

35. During his visit, the Special Rapporteur was informed that some trade unions had been denied registration in previous years, including Zhanartu, which had reportedly been denied registration eight times since 2010; the independent union of journalists, which had reportedly been denied registration on technical grounds several times, most recently in November 2014; and Zhezkazgan, which had been denied registration three times in recent years. These organizations had reportedly yet to submit their documents to register under the new law.

36. The Special Rapporteur is concerned that the right to strike is limited by various preliminary mediation procedures that are mandatory before a strike can be deemed legal. The Labour Code also bans strikes in certain sectors, including the railway, transport and petroleum industries. It also entitles an employer to terminate employment contracts with employees who participate in strikes that are declared illegal. The new Criminal Code also created a new offence for "actions provoking continued participation in an illegal strike" (art. 402). The Special Rapporteur views the legal framework regulating strikes as more focused on limiting strikes than on facilitating the exercise of the right to freedom of association.

37. In May 2011, in a region known for its formidable exploitation of natural resources, workers of three companies operating in the oil sector started labour strikes (see paras. 72-89 below). In August 2011, a few months after the start of the first strikes, Natalia Sokolova, a union lawyer who defended the interests of oil strikers, was sentenced to six years in prison for "inciting social discord" after she called for a change to the system for calculating workers' salaries. The Special Rapporteur is baffled that such a vaguely worded

offence could be used against a union lawyer. Publicly speaking out about work conditions is in fact a core responsibility of unions; public debate about the issue, likewise, is a fact of life in a capitalist economy. Ms. Sokolova was released in March 2012, but the Special Rapporteur is concerned that her arrest and the arrest of other strike leaders contributed to inflame social tensions, ultimately leading to the tragic events of December 2011.

38. In Strategy Kazakhstan 2050, President Nazarbayev highlighted that one of the most serious challenges for Kazakhstan was that some "social groups have not joined the overall modernization process". Although the unemployment rate is said to be low in Kazakhstan, wealth disparities among the regions remain high, despite the fact that some efforts to address this are being made, for example, in the Zhanaozen region. Economic reforms are important in this regard, but may not be sufficient to ease social tensions when they erupt. Independent trade unions play a positive role in this regard as they can help the authorities build bridges with the population to identify needs and challenges, as well as solutions.

C. Public associations

39. The 1996 Law on Public Associations requires that all associations be registered with the State. The Special Rapporteur recalls that unregistered associations are protected by international law pertaining to freedom of association. Allowing the existence of unregistered associations is all the more essential as article 489 of the new Code on Administrative Offences criminalizes the management, participation in and financing of the activities of unregistered public associations.

40. During his visit, the Special Rapporteur was informed of certain public associations, such as Kok-Zhailau, an ecological group, and Amanat Aktau and Aktau Voice, which aimed to support the families of the victims of the Zhanaozen crisis, but which had recently been denied registration, owing to, according to the information provided by the Government, the discrepancies in the submitted documents. He encourages the authorities to proactively facilitate the formation of public associations, as they play a crucial role in advancing human rights and development.

41. The Special Rapporteur welcomes the fact that the Constitution of Kazakhstan prohibits the illegal interference of the State in the affairs of public associations, but he is seriously concerned that the same constitutional article refers to the illegal interference of public associations in the State's affairs. The new Criminal Code also warns associations from causing any illegal hindrance to the lawful activities of governmental bodies and from being involved in acts leading to considerable harm to the rights and legitimate interests of citizens or organizations or to the interests of the society (art. 403). The Special Rapporteur was not reassured by the fact that officials told him that this law only targeted political parties. He believes that the wording of article 403 is too vague, leaving room for broad and subjective interpretation. For example, it is not clear what constitutes "interference in the activities of State bodies", nor when interference would be considered "illegal". He strongly encourages the Government to revise the aforementioned provisions to ensure that they do not adversely affect members of public associations.

42. During his visit, the Special Rapporteur was inspired by the many human rights defenders and other members of civil society organizations he met and who are engaged in critically important work to strengthen the rule of law in Kazakhstan. In this context, the Special Rapporteur is deeply troubled by the case of Zinaida Moukhortova, a former member of the Bar Association, who has been repeatedly subjected to forced psychiatric treatment over the past four years. He finds it deeply disturbing that Ms. Moukhortova has been placed on numerous occasions in psychiatric detention after she urged the authorities to investigate possible corruption practices. He is also seriously concerned that numerous human rights defenders have decided to stop their human rights work after being arrested.

He underscores that human rights defenders play a crucial role in any country's realization of civil, cultural, economic, political and social rights, and he urges the authorities to take prompt appropriate actions to respect and protect their rights.

43. In the new Criminal Code, individuals identified as leaders of public associations may be subject to a separate category of offences with aggravated penalties. However, the definition of "leader" is so vaguely worded that civil society representatives fear that any member of a public association may be deemed a leader. The Special Rapporteur is unclear as to why leaders of public associations should be more dangerous than other individuals or why there must be stricter criminal punishments for them. He is unaware of any proven correlation between one's profession or position and criminality. Rather, this law appears simply to be a way to instil fear in civil society leaders who consider criticizing the Government or its policies. The Special Rapporteur urges the authorities to repeal any laws that discriminate against individuals on the basis of their affiliation with an association carrying out peaceful activities.

44. The Special Rapporteur commends the Government's creation of a Consultative Advisory Body or Platform for Dialogue on Human Dimension with non-governmental organizations, working notably on recommendations to the Government and Parliament. Organized under the Ministry of Foreign Affairs, the consultative advisory body is composed of various types of organizations, including groups working on human rights issues and groups that are known to be critical of the Government. Civil society's involvement in the State's decision-making process is an important component of pluralism and democracy and can only benefit Kazakhstan. The Government has reportedly adopted 168 of the recommendations of the body, which signals the opening of a space for dialogue. However, the Special Rapporteur urges the Government not only to adopt technical recommendations but also to embrace those recommendations that address systemic shortcomings.

45. The Special Rapporteur is concerned that a new grant-making mechanism — which is being promoted by the consultative advisory body and, at the time of drafting the present report, is supported by the Minister for Culture and Sports — may fall short of international human rights standards. Article 6 of the draft law on the introduction of changes and addenda to certain legislative acts of Kazakhstan pertinent to the activity of non-governmental organizations proposes the establishment of an operator to allocate grants to public associations and to monitor the implementation thereof". The responsibility of allocating all grants — public and private — to public associations may give the operator the power to control the entire sector. The Special Rapporteur strongly recommends that the draft law be limited to applications for State grants. State bodies should not be in a position to allocate private, international or foreign funds to public associations. Such arrangements create an unacceptable risk of subjective and arbitrary allocation of funds. The Special Rapporteur also recommends that the operator body be guaranteed independence, for instance, by including representatives of civil society in its composition.

D. Religious associations

46. Religious pluralism is a distinct characteristic of Kazakh society, and both the State and the country's people should be justifiably proud of this inclusive tradition. However, the Special Rapporteur remains concerned at numerous legal provisions that go too far in limiting the right to freedom of association in a religious context. The Special Rapporteur endorses the recommendations pertinent to his mandate put forward by the Special Rapporteur on freedom of religion or belief, who undertook an official visit to Kazakhstan in 2014 (see A/HRC/28/66/Add.1). More specifically, the Special Rapporteur on the rights to freedom of peaceful assembly and of association shares the concerns of the Special

Rapporteur on freedom of religion or belief about the compulsory re-registration requirements stipulated in the 2011 Act on Religious Activities and Religious Associations. He agrees that registration should not be mandatory and that unregistered communities should be able to operate free from discrimination or intimidation.

47. Under the Act, religious groups are required to re-register within a specified time frame (i.e. one year) in order to obtain the status of a registered religious association at the national, regional or local levels. The registration of religious groups at the national level requires membership of at least 5,000 individuals; registration at the regional level requires 500 members; and registration at the local level calls for a minimum of 50 members. Only Sunni Muslims, the Russian Orthodox Church and the Catholic Church have been registered at the national level, while other communities have been recognized in particular regional or local territories only. In the absence of registration, religious groups are effectively banned from exercising any collective religious functions. Members, meanwhile, may face administrative sanctions if they routinely practice their rituals, even in private homes — a fact that government officials confirmed during the Special Rapporteur's visit. In order to ensure compliance with international standards, the Special Rapporteur recommends that the authorities seek assistance from the Special Rapporteur on freedom of religion or belief, the Council of Europe Venice Commission and the Kazakh Constitutional Council. The Special Rapporteur welcomes the formation of an advisory group involving representatives of religious associations and government bodies to develop proposals on making further improvements to the legislation.

48. Government officials told the Special Rapporteur that such strict regulation of religious groups was necessary to protect society against extremism, highlighting that at least 300 individuals from Kazakhstan had gone to fight for Islamic State in Iraq and the Levant in Iraq and the Syrian Arab Republic. The Special Rapporteur agrees that extremism is a serious concern. However, he underscores that extremism is more likely to grow in circumstances where there are vast socioeconomic disparities and little space for individuals to express their grievances. Extremism most often appeals to those who are desperate, and the Government should be cautious that its policies do not contribute to fostering such desperation. Banning peaceful religious groups is likely to do just that.

49. Officials informed the Special Rapporteur that the Act on Religious Activities and Religious Associations might be amended in the future, but that there was currently a need for greater transparency from religious organizations. The Special Rapporteur believes that criminal groups will always find ways to circumvent transparency requirements and that the Act on Religious Activities and Religious Associations is unlikely to make a significant contribution in limiting extremism. He also believes that extremist groups are best tackled through the Criminal Code, not by a law on religious activities and religious organizations. While combating criminal activities is one of the core functions of a State, the Special Rapporteur warns against any counter-extremism and counter-terrorism measures that may have an adverse impact on freedom of association.[2]

50. Finally, the Special Rapporteur is concerned at the requirement for individuals carrying out religious functions with some degree of public visibility to register as "missionaries". Specifically, the Special Rapporteur was informed that the Act on Religious Activities and Religious Associations had had adverse effect on Jehovah's Witnesses, who until the adoption of the legislation had reportedly not experienced major difficulties in enjoying their rights to freedom of association and of religion or belief. The Special Rapporteur wishes to highlight the case of the representative of the Christian Centre of

[2] See the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/61/267).

Jehovah's Witnesses in Kazakhstan, who is a Russian national living in Kazakhstan for more than 10 years. In November 2013, he was charged with illegal missionary activity after he participated in a weekly peaceful religious meeting of Jehovah's Witnesses. The Special Rapporteur has been informed about several other examples of individuals subjected to severe fines and seizure of documentation for unregistered "missionary activity".

51. Officials told the Special Rapporteur that Jehovah's Witnesses do not always enjoy the support of all segments of society. However, this can never be a justification for limiting their rights under international law. The Special Rapporteur finds it contradictory to depict them as being isolated from the society, while at the same time preventing them from gathering and publicly speaking about their religious beliefs to relatives, friends or neighbours. He emphasizes that it is the duty of State authorities to proactively protect all individuals against any form of stigmatization or discrimination and to ensure that everyone enjoys his or her rights and freedoms. He strongly encourages the authorities to meet with representatives from Jehovah's Witnesses and any other religious groups to discuss ways to ensure they enjoy their rights.

III. Freedom of peaceful assembly

A. Exercising the right to freedom of peaceful assembly

1. Legislation

52. The right to peacefully assemble, hold meetings, rallies and demonstrations, street processions and pickets is guaranteed by the Constitution. However, in practice, the Government's approach to regulating assemblies renders that right meaningless. The 1995 Law on the Procedure for Organizing and Holding Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations requires that representatives of labour collectives, public associations or separate groups of citizens of Kazakhstan who reached the age of 18 seek prior permission from local authorities at least 10 days before the date of the gathering. Those requirements do not comply with international standards, which provide that no authorization should be required to assemble peacefully and that everyone has the right to freedom of peaceful assembly and of association (Human Rights Council resolution 15/21).

53. Furthermore, the law provides that the *maslikhat* and *akhimat*, the local representative and local executive authorities, respectively, have the power to designate specific sites where authorized assemblies can be held. Designation of these sites, usually located in remote areas, prevents organizers and participants from choosing venues they consider the most appropriate to express their aspirations and grievances.

54. During his visit, the Special Rapporteur visited Sari Arka square, which is the only site in Almaty where gatherings are allowed. The square is located about seven kilometres from the city centre, thus depriving demonstrators from the opportunity to express their views and opinions within sight and sound of their target audience, for example, government officials or fellow citizens in the areas of town with the highest density of people. The Special Rapporteur is gravely concerned that in a city of about 1.5 million inhabitants, the only designated place for assemblies is slightly bigger than a football pitch and is located in a relatively distant residential area.

55. In these conditions, it is not surprising that 324 out of 497 assemblies recorded between 2012 and 2014 were deemed "unsanctioned", according to figures provided by the Ministry of Justice. Figures provided by the Government also show a decrease in the

number of requests for holding assemblies over the past few years, especially in the field of civil and political rights. Officials in Aktau reported that no requests for assemblies were received in 2013 and 2014.

56. Proceeding with an unauthorized assembly can carry significant criminal consequences. Article 400 of the new Criminal Code imposes penalties for participation in "illegal" assemblies "resulting in serious harm to the rights and interests of citizens". Although those penalties have been reduced under the new Criminal Code, they remain disproportionately severe and can include the deprivation of liberty.

57. The Criminal Code also forbids providing "assistance" to "illegal" assemblies, including by "means of communication". The Special Rapporteur believes that this provision unduly limits the rights to freedom of peaceful assembly, association and expression, by potentially making it a crime to promote a protest event. Indeed, it appears that the provision is aimed at preventing activists from using social media and other communication tools to organize. For the same reasons, the Special Rapporteur is concerned at amendments to the Law on Communications, adopted in April 2014, which grants the Prosecutor's Office the power to suspend the operation of a network, including the Internet, without a court order.

58. The Special Rapporteur emphasizes that, while the right to freedom of peaceful assembly may be subject to certain limitations under international human rights law, such limitations must be exceptions and that cannot undermine the essence of the right. In his meetings with government officials, the Special Rapporteur found a repeated overemphasis on restrictions rather than the rights themselves. In rationalizing the numerous restrictions on assemblies, authorities frequently cited traffic issues and the need to protect "the rights of others". Government officials also told the Special Rapporteur that limitations to peaceful assembly were necessary in order to prevent massive unrest and cited the recent events in Ukraine as an example. The Special Rapporteur finds this justification unconvincing. The local political, economic and social context in Kazakhstan is vastly different.

59. The Special Rapporteur believes this is a misconstruction of the concept of human rights. Although certain restrictions are allowed under paragraph 4 of Human Rights Council resolution 15/21, the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights provide a clear framework for the authorized limits under international human rights law. Fundamentally, the scope of a limitation referred to in the Covenant shall not be interpreted so as to jeopardize the essence of the right concerned and shall be interpreted strictly and in favour of the rights at issue (see E/CN.4/1985/4, annex, paras. 2-3). In this context, the Special Rapporteur underlines that the right to peaceful assembly must not be subject to prior permission from the authorities, but at best by a notification procedure whose rationale is to ensure police protection to demonstrators and bystanders.

60. By specifying that authorized assemblies can only be held at specific designated sites and following the grant of permission from the State, the Special Rapporteur believes that the right to freedom of assembly is treated as a privilege or a favour rather than a right. Although in limited circumstances, for a certain period of time, the right to peaceful assembly may legitimately be restricted in certain locations, prohibiting assemblies in all locations but one designated area violates international human rights law.

61. Indeed, in November 2014, the Human Rights Committee found that Kazakh law had violated the right to peaceful assembly in the case of Bakhytzhan Toregozhina and ruled that the Government was under the obligation to review its legislation, in particular the Law on the Order of Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations (see CCPR/C/112/D/2137/2012, annex, para. 9).

The Special Rapporteur encourages the Government of Kazakhstan to promptly and effectively implement this decision, and every other view from treaty bodies that form part of the human rights machinery.

62. The Special Rapporteur echoes the findings of the Human Rights Committee and notes that the Government has admitted on multiple occasions that the Law on Assemblies falls short of international standards. In 2007, for example, the Human Rights Commission, a consultative body under the President, concluded in its baseline report on human rights in Kazakhstan that the 1995 Law had failed to comply with international standards. Among other things, it highlighted the fact that the law did not differentiate between participants in a gathering and monitors or passers-by, often resulting in the arrest of the latter.

63. In 2010, on the occasion of the universal periodic review of Kazakhstan, the authorities committed themselves to making efforts to speedily draft and implement the new law on the right to assembly with fewer demands regarding prior registration and fewer requirements (see A/HRC/14/10, para. 97). That laudable commitment was reiterated in the framework of the 2014 universal periodic review of Kazakhstan, when authorities announced that a policy framework for a new law on peaceful gatherings and rallies was being drafted by the relevant State authorities with the participation of civil society (see A/HRC/WG.6/20/KAZ/1, para. 120). Ahead of the Special Rapporteur's visit, the Ministry of Justice had prepared a report stating that the Government had taken a decision to develop a draft law on amendments to certain legislative acts on ensuring security during mass sports, cultural entertainment and other public events.

64. The Special Rapporteur is encouraged by these developments, but believes that the promised reforms need to be approached with a greater sense of urgency. He notes, for example, that, during his visit, no one in the Government was able to provide an update on the status of the amendments to the Law on Assemblies.

65. He fears that the heavy-handed regulation of peaceful dissent has contributed to a general decline in open civic participation, as exemplified by the decrease in the number of applications to hold an assembly. This creates an increased impression that underlying discontent may fester and become ripe for exploitation by extremist ideologies. He recalls that the right to freedom of peaceful assembly is also crucial because it gives people a peaceful outlet to air their grievances. Indeed, for this reason, it is a critical guarantor of social peace and cohesion.

66. The Special Rapporteur thus encourages the authorities to consider a complete overhaul of its approach to regulating peaceful assemblies, starting by repealing the requirement of prior authorization and by allowing assemblies to take place in areas other than the designated "protest spaces". The Special Rapporteur reiterates that he is at the disposal of the authorities for any assistance they may require in the drafting of a new law.

2. Practice

67. During his visit, the Special Rapporteur learned that dozens of individuals had planned to stage peaceful assemblies from 24 to 27 January 2015 in 10 separate locations. In nine cases, authorities did not allow participants to hold assemblies in the locations of their choice; they were permitted to proceed only in authorized venues. Organizers of the tenth assembly eventually decided not to hold it. The Special Rapporteur also received reports that some participants of the planned protests had been subjected to "preventive detention".

68. On occasion, authorities' strict adherence to the law's wide-ranging regulation of peaceful assemblies has led to preposterous situations. For instance, police have used force on multiple occasions to break up "one-person protests" — often from the Antigeptil group, an ecological movement. On 2 February 2015, a peaceful individual attempting to submit a

petition in support of the closed *ADAM Bol* newspaper was arrested, reportedly for breaching the Law on Assemblies. On 6 October 2013, a race organized at a local stadium in Almaty by dozens of peaceful individuals under the slogan "Kazakhs for sport" was broken up by police because the gathering had not been authorized. On 31 October 2013, a Halloween costume party organized through social media by a group of 15 peaceful students in Pavlodar was dispersed on the same grounds. On 5 March 2014, force was used against young children and their parents peacefully demonstrating against forced evictions in Astana. These are just a few of the examples that were brought to the attention of the Special Rapporteur. In all of the cases, the Special Rapporteur considers authorities' actions violated international law and standards.

69. Although officials assured the Special Rapporteur that local authorities did not discriminate against assemblies on the basis of their content or message, reports from civil society indicate otherwise. Requests to hold assemblies reportedly receive different treatment depending on their content; protests over potentially controversial issues are less likely to be authorized. For instance, a peaceful demonstration in Astana against the proposed deportation of opposition leader Mukhtar Ablyazov from France to Kazakhstan was rapidly broken up by police on 2 September 2013. A month later, a protest calling on French authorities to keep Mr. Ablyazov in prison until the official extradition request by Kazakhstan had been examined — a stance favoured by the authorities — took place without any police interference.

70. The Special Rapporteur is also concerned about the use of "preventive detention" or "preventive warning". Government officials justified such measures by saying that they were used as a public service to "inform" citizens about the law. However, in the Special Rapporteur's view, this is a form of intimidation. It is also a blatant violation of the right of peaceful assembly, as well as the rights to security and liberty.

71. Despite numerous challenges in the area of the right to freedom of peaceful assembly, the Special Rapporteur notes with appreciation that violence and excessive use of force at protests is rare in Kazakhstan, with the dramatic events of Zhanaozen standing out as an obvious exception. For example, tear gas seems to have rarely — if ever — been used during public assemblies in Kazakhstan. An official order, meanwhile, prohibits the apprehension of assembly organizers at the place where an assembly is taking place to prevent agitation, although repeated forcible removal of assembly participants into police minivans was brought to the Special Rapporteur's attention.[1] This seems to illustrate a high degree of responsibility by all sides, which the authorities should build on to further widen the democratic space.

B. Zhanaozen crisis

72. The Special Rapporteur visited the city of Zhanaozen, which was the epicentre of a seven-month-long strike by oil workers lasting from May to December 2011. On 16 December 2011, clashes between demonstrators and police resulted in numerous deaths and casualties. Two official statements were issued in the weeks following the events. According to the statement delivered by the Prosecutor General on 25 January 2012, "64 persons received gunshot wounds, 14 individuals died — the deaths of two of them not being related to the violence — and 35 policemen were wounded as a result of the clashes". According to the second statement issued by the Prosecutor General, on 22 February 2012, at least "12 individuals died of gunshot wounds, two persons died from the injuries they

[1] See Minister of Internal Affairs order 665 of 6 December 2000.

sustained, one person died from burns suffered during the pillage of the Sulpak trade centre and one person died from shotgun wounds that was unrelated to the riots".

73. The strike began in May 2011, a few weeks after the presidential elections, and was led by oil and gas workers from Karazhanbasmunai JSC, Ozenmunaigas and Ersai Caspian Contractor LLC. The workers demanded an increase in pay and a halt to company interference in trade union activities. Within weeks of the start of the strike, local courts declared the action illegal on the grounds that assemblies were being held at hazardous facilities in violation of the law. Hundreds of strikers were dismissed for participating in these "illegal" — although, it should be emphasized, entirely peaceful — assemblies as a result. The strike continued, however, along with public assemblies in Zhanaozen's main square.

74. In December 2011, local authorities decided to organize independence day festivities on the same square where workers had been demonstrating for several months. On 16 December 2011, which is when Kazakhstan celebrates its independence, altercations between a group of demonstrators and festivalgoers erupted. Police reportedly intervened and moved the strikers into a corner of the square, before turning back. Shortly thereafter, a group of young men, some wearing oil company jackets, reportedly began to destroy some equipment related to the independence day celebration. Several facilities were allegedly set on fire.

75. In response, police began firing live ammunition into the crowd. In a video made available on social media,[1] police can be seen firing their weapons indiscriminately, hitting unarmed demonstrators in the back and fleeing the square.

76. The Special Rapporteur discussed the Zhanaozen crisis with the Office of the General Prosecutor, the relatives of those who had lost their loved ones and with numerous workers who had been demonstrating on 16 December 2011. He was left with the distinct and troubling impression that, more than three years after this tragic crisis, the wounds had not healed.

77. The Special Rapporteur commends the Government for its efforts to increase resources in the region, which could help to mitigate some of the underlying reasons for the 2011 strikes. He notes that most of the workers who were on strike had been gainfully employed at the time of the visit. He also notes that practically all those who were convicted for mass unrest (see para. 84 below) have now been released on parole. However, there is more that needs to be done.

78. One of the most important steps towards healing involves finding out what exactly happened in Zhanaozen. To this day, there is still conflicting information about the events of 16 December 2011 — in particular the actions of the workers, possible agents provocateurs and police action. It is not clear who participated in the violence, what police forces did to separate violent individuals from peaceful demonstrators and bystanders commemorating independence day, what circumstances led police forces to resort to lethal force and who ordered the police to use lethal force.

79. In the absence of a clear understanding of the sequence of events, the Special Rapporteur joins the call of OHCHR for an independent international inquiry into the crisis. Such an independent investigation would make it possible to comprehensively shed light on the crisis, restore trust in the justice system and allow the victims to heal, including through moral compensation.

[1] https://www.youtube.com/watch?v=gX8I2JzFIpo

80. The inquiry should also include an investigation of what happened in the city of Shetpe, located a few kilometres away from Zhanaozen, where clashes on 17 December 2011 between police, workers and residents led to the death of one person. Dozens of others were wounded by gunfire. Workers and residents were reportedly demanding the restoration of communications to Zhanaozen, as telecommunications had reportedly been cut off and several websites blocked in the days following the clashes there.

81. Following the completion of the inquiry, the Government must hold individuals, including officials, accountable for their actions in Zhanaozen. Although five police officers have been convicted for abuse of power following the events of 16 December, none of them have been convicted for killing protesters. In fact, the vast majority of the police officers on duty that day continued to perform their duties.

82. Likewise, there has been a conspicuous absence of charges against high-level officials involved in supervising the police response. This is troubling, as President Nazarbayev said on 21 December 2011 that the workers' demands were legitimate.[5] According to reports,[6] prosecutors said at the trial against police officers that the police should have used alternative methods to respond to the mass disturbances.

83. The Special Rapporteur was informed that a special fund had been established by the Oblast of Mangystau to compensate survivors of the Zhanaozen events. A number of those who were injured in 2011, including bystanders, have not been able to find employment since. The Special Rapporteur calls on the Government of Kazakhstan to ensure that the ratification of the Convention on the Rights of Persons with Disabilities provides victims with additional opportunities to seek redress.

84. A few days after the violence, civil society organizations reported that as many as 700 persons had been arrested. While the vast majority of them were released in the following days, 37 oil workers were charged with various crimes, including "organizing and participating in mass unrest". Among them was strike leader Roza Tulataeva, who was paroled in November 2014. The Special Rapporteur notes with appreciation the steps taken by the authorities to parole the convicted workers and to provide them with job opportunities to ensure their social rehabilitation and reintegration. However, he is gravely concerned that, during the trial, almost all of the 37 defendants fully or partially retracted their testimonies after claiming that they had been physically and psychologically abused by police in detention. The allegations of mistreatment included severe beatings, suffocation and threats to harm family members, all with the apparent aim of coercing testimony against themselves or others. In fact, most of the defendants who had pleaded guilty later alleged torture or other mistreatment. On 20 December 2011, one of the detainees, Bazarbai Kenzhebaev, who had been arrested four days earlier, died from injuries apparently sustained in custody.

85. Many of the victims and survivors with whom the Special Rapporteur met in Zhanaozen expressed concerns about risks of reprisals for meeting with him. Indeed, the above-mentioned surveillance incident in Aktau occurred the day before a meeting with sources to discuss the 2011 events in Zhanaozen.

86. The Government formed a task force to investigate allegations of torture and ill-treatment of those detained, but it was comprised of representatives from the Ministry of Interior and the General Prosecutor and thus lacked the independence necessary to conduct

[5] See www.kt.kz/rus/state/kulibaev_budet_osvobozhden_ot_dolzhnosti_glav_fnb_samrukkazyna_1153549470.html (article available in Russian only).

[6] See http://tengrinews.kz/kazakhstan_news/prokuror-politsevskie-mogli-oboytis-dubinkami-podavlenii-213066/ (article available in Russian only).

a proper investigation. Indeed, the panel determined that no crimes had been committed against the detainees and, as a result, no one has ever been prosecuted for the alleged torture. Although officials repeated that the trial of workers had been carried out in a transparent manner, this is not sufficient to meet international standards related to the right to a fair trial, which require thorough, independent and impartial investigations into all allegations of ill-treatment.

87. The recent adoption by Kazakhstan of a zero-tolerance policy towards torture and the implementation of a national preventive mechanism are commendable. The Special Rapporteur urges the Government to implement them retroactively and to re-examine the convictions of the Zhanaozen workers. This will ensure that their convictions were not made on the basis of coerced evidence and that the alleged perpetrators are brought to justice.

88. Separately, the Special Rapporteur is disturbed that most of those convicted in Zhanaozen had been known to be the most active organizers during the 2011 strikes. They were engaged in legitimate associational activity and should not be blamed for the crisis.

89. The tragic events in Zhanaozen had a profound negative impact on the perception of peaceful protests in Kazakhstan, sparking a wave of legal reforms that seemed driven by the overriding aim of prohibiting assemblies whenever possible. It is also crucial to change public perception of freedom of peaceful assembly in general, and of Zhanaozen strikers in particular. As demonstrators were on occasions depicted as criminals, alcoholics or drug addicts by some media outlets, authorities have a significant role to play to protect those exercising their rights to freedom of peaceful assembly and of association from any form of stigmatization, intimidation, threats or defamation. In 2011, opportunities to engage in dialogue between strikers, company leaders and State representatives were missed. It is therefore crucial that the authorities restore trust and mutual understanding so as to avoid repeating mistakes from the past. The Special Rapporteur acknowledges that facilitating protests can be challenging but urges the Government to meet these challenges head on, with the same energy and effort that Kazakhstan has used to approach its economic development since 1991.

IV. Conclusions and recommendations

90. **During the Special Rapporteur's visit, authorities repeatedly made reference to the rule of law to justify restrictions to the enjoyment of freedom of peaceful assembly and of association. However, in practice, the Special Rapporteur believes that the Government's policies seem more driven by an adherence to "rule by law".**

91. **The Special Rapporteur recalls that the law is an expression of the peoples' will and is therefore meant to serve the people. The rule of law implies that individuals are free to enjoy their human rights without prior authorization from State authorities. Otherwise, the rule of law principle may turn into an arbitrary "rule by law" norm, which is likely to erode the essence of these rights. The Special Rapporteur urges the Government of Kazakhstan to pay attention not only to the technical requirements of its human rights obligations, but also to the spirit of these obligations. Although the rights to freedom of peaceful assembly and of association are not absolute, the essence of these rights cannot be jeopardized by State-imposed limitations that are neither legitimate nor proportionate to the aim pursued. Restrictions must be strictly defined and narrowly interpreted in order to comply with the international human rights law.**

92. **The Special Rapporteur is concerned that the State's current approach to the rights to freedom of peaceful assembly and of association has had an adverse effect on public discourse. Opposition or dissenting views are frequently seen as a source of**

possible instability, rather than as a means to strengthen the rule of law. Kazakhstan has come a long way since 1991. Focus has been put on economic reforms to empower people, but the younger generation, who did not live through the harsh Soviet period, appear to have greater aspirations. It is natural that they want to take ownership of their society by participating in public affairs. Authorities pointed out that Kazakhstan has enjoyed rapid economic development, which in times of financial difficulties and geopolitical changes may risk leading to social turmoil. These are legitimate concerns that can only be addressed by ensuring that laws are in compliance with international human rights standards and widening the democratic space. An enabling environment for civil society is a priceless means to allow authorities to continue pursuing ongoing reform processes with greater support from the population but also to build robust institutions with representative, responsive and accountable governance that can protect the society against tumult. Any change is a challenge. Reforms require some dose of political courage and will, but the Special Rapporteur is convinced that Kazakhstan is capable of advancing the rights to freedom of peaceful assembly and of association in a short period of time.

93. The Special Rapporteur invites the authorities to disseminate the present report widely, so that it can serve as a springboard for a public dialogue on expanding civic space. The plan of Kazakhstan to develop a human rights action plan until 2020 to implement the universal periodic review's recommendations, taking into account the view of civil society, should outline the necessary actions to be taken to bring national laws and practices in line with the different recommendations of international human rights mechanisms in a holistic manner.

94. Although the present report highlights some shortcomings regarding the rights to freedom of peaceful assembly and of association, the Special Rapporteur wishes to reiterate that his review and recommendations are offered in a spirit of constructive dialogue. Kazakhstan has made remarkable progress in the economic realm since independence, and the Special Rapporteur firmly believes that it is capable of replicating this progress in the field of the rights to freedom of peaceful assembly and of association. The Special Rapporteur reiterates that he remains at the disposal of the authorities in helping them achieve these goals and is willing to conduct a follow-up mission and provide technical assistance in the drafting of new laws or amendments.

95. The Special Rapporteur makes the following general recommendations:

(a) Recognize in law and in practice that the rights to freedom of peaceful assembly and of association play a decisive role to foster pluralism, tolerance and broadmindedness, where opposition, minority or dissenting views or beliefs are respected and protected;

(b) Ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association or subject to threats or use of violence, harassment, persecution, intimidation or reprisals;

(c) Ensure that any limitations on the rights to freedom of peaceful assembly and of association have a legitimate aim, are defined by law, are proportionate to the aim pursued and are necessary in a democratic society;

(d) Ensure that victims of violations and abuses of the rights to freedom of peaceful assembly and of association have the right to an effective remedy;

(e) Implement the recommendations pertinent to freedom of association and of peaceful assembly, including the views adopted by the United Nations treaty bodies in individual communications.

96. **Concerning the right to freedom of association, the Special Rapporteur calls on the relevant authorities:**

(a) **To strictly and narrowly define the offence of incitement to discord (art. 174 of the new Criminal Code) to bring it in line with international human rights law and avoid any adverse effects on the rights to freedom of peaceful assembly and of association;**

(b) **To amend the Law on Political Parties so as to increase citizens' opportunities to create political parties, including by decreasing the number of required individuals to form a political party and by specifying a limited time frame for registration to be examined by an independent body;**

(c) **To ensure individuals can form and join trade unions of their choice, including by eliminating compulsory state registration;**

(d) **To ensure that the Law on Public Association allows for the free operation of unregistered associations, and that any amendments concerning access to funding do not jeopardize the independence of associations, including by limiting the proposed new grant mechanism to State funds only;**

(e) **To repeal the offence of "illegal interference of members of public associations with activities of State bodies" (art. 403 of the new Criminal Code);**

(f) **To revise the Act on Religious Activities and Religious Associations to ensure religious organizations can be formed and can operate freely without the State's prior approval.**

97. **Concerning the right to freedom of peaceful assembly, the Special Rapporteur calls on the relevant authorities:**

(a) **To adopt within a specific time frame a new law on public assembly in compliance with international human rights law, with the participation of civil society. The new law should eliminate the State's prior approval to hold an assembly, strictly and narrowly define the limited places where assemblies cannot take place, explicitly specify that public order and safety is the State's duty only and remove criminal liability for "participation in an illegal assembly" (art. 400 of the Criminal Code);**

(b) **To implement the rights to security, to liberty and to be presumed innocent until proved otherwise, including by ensuring that no one is subject to "preventive detention" for the exercise of the right to peaceful assembly;**

(c) **To ensure law enforcement officials apply non-violent means before resorting to force and, when force is unavoidable, exercise restraint in proportion to the seriousness of the offence and to objectives pursued with due respect to human lives;**

(d) **To launch an international independent investigation into the tragic crisis in Zhanaozen and Shetpe with a view to bringing perpetrators of human rights violations to justice and to providing redress to victims;**

(e) **To consider granting Vladimir Kozlov early release for "good behaviour", as per national legislation;**

(f) **To re-examine the conviction of the Zhanaozen oil workers who claim to have been forced to confess as a result of torture or ill-treatment.**

98. **In addition, the Special Rapporteur calls on the relevant authorities:**